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**Human Rights Abuses Along the U.S. Border with Mexico
Persist Amid Climate of Impunity**

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I. INTRODUCTION

After a follow-up investigation conducted nearly a year after issuing its first report condemning human rights violations along the U.S. border with Mexico (*Brutality Unchecked: Human Rights Abuses Along the U.S. Border with Mexico*, May 1992), Americas Watch concludes that serious abuses by U.S. immigration law enforcement agents continue and that current mechanisms intended to curtail abuses and discipline officers are woefully inadequate.

During the past year, the Immigration and Naturalization Service (INS), its enforcement body, the Border Patrol, and the Customs Service have been subjected to heightened scrutiny from legislators, human rights groups, community

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activists, and the press concerning the conduct of their agents.¹ Yet the agencies have failed to introduce measures needed to curtail agent misconduct or to hold abusive agents accountable.

While the U.S. Congress has taken steps to address this problem—by holding hearings and proposing independent review of abuse allegations—the Clinton administration has yet to appoint an INS Commissioner and has failed to articulate a new approach to this ongoing problem. Americas Watch calls upon the Clinton administration to apply international human rights standards—which the administration has stated are a key component in its foreign policy decisions—here in the United States by appointing an INS Commissioner who will take concrete steps to end the brutality.²

The past year has not been a good one for immigration law enforcement agencies,³ particularly the Border Patrol. Two highly publicized trials—one involving an agent accused of murdering an unarmed Mexican national, the other involving an agent accused of raping two women—revealed some of the many shortcomings of the internal review procedures used by the INS. (*See*, Section II) When those procedures—generally hidden from public scrutiny—were exposed, they confirmed what immigrant and human rights activists have been saying for years: there is no accountability for INS agents.

This report is based on a March 1993 fact-finding trip along the 2,000 mile U.S.-Mexico border, as well as information gathered from U.S. government officials, U.S. and Mexican human rights organizations, press accounts, lawyers representing victims and their families, and witnesses and victims themselves. Americas Watch also spoke with relevant Department of Justice officials, representatives of the INS, and U.S. Customs, and Border Patrol agents in the field.

Americas Watch finds that beatings and other forms of mistreatment are still common during the arrest and detention of undocumented immigrants, U.S. citizens and legal residents.⁴ While less frequent than beatings and mistreatment, unjustified shootings and sexual assaults also occur. This report documents physical abuses during the apprehension and detention of suspected undocumented immigrants, abuses at checkpoints and during roadside stops, overzealous enforcement at schools, immediate deportations, and the unauthorized use of firearms.

It also examines the inadequate procedures for receipt and review of complaints alleging violations by U.S. immigration law enforcement agents. These procedures, as well as obstructive actions by Service agents, guarantee that complaints are underreported. In the case of the INS, even if a complaint is filed, the investigations mechanisms used are plagued by overlapping jurisdiction and broad gaps that result in inadequate investigations and, ultimately, impunity for abusive agents. Both systems are

¹ In this report, for the first time, Americas Watch examines allegations of abuse committed by Customs agents along the border. Although the abuses committed by the Customs Service do not appear to be as widespread or as serious as those of the Border Patrol, Americas Watch has documented several instances of abusive conduct by Customs agents. Further, in those cases, victims who sought to complain found that the agency frequently attempted to dissuade them from doing so.

² Similarly, President Clinton should instruct the Customs Commissioner to take tangible steps to curtail human rights abuses by agents in the field and to insist on accountability for abusive agents.

³ This report shall refer to INS agents, Border Patrol agents, and Customs agents collectively as immigration law enforcement agents. We are aware that the Customs Service is primarily tasked with inspectional duties rather than immigration law enforcement, but its agents are cross-designated to carry out limited functions usually assigned to INS personnel.

⁴ Verbal abuse of suspected undocumented immigrants by INS and Customs agents is so common that we have not included allegations of it in this report.

further undermined by near total secrecy and, in the case of the INS, excessive discretion in the disciplinary process that fosters cronyism on the part of supervisors in the application of appropriate sanctions.

More than a decade ago, a report issued by the U.S. Commission on Civil Rights considered civil rights issues in the immigration process and the mechanisms in use by the INS to address these concerns.⁵ That report evaluated the INS investigation procedures for complaints alleging violations of the rights of immigrants by INS agents. The report found serious problems in the complaint procedures and recommended numerous reforms to the INS. More than a decade later, the structural changes recommended by the Civil Rights Commission have not been implemented. In fact, this past April, Regional Border Patrol Chief Gustavo de la Viña testified before the Civil Rights Commission that, to the best of his knowledge, there has been no change in the complaint procedures since 1980.⁶

In recent years, changes in U.S. law and policy have led to a climate along the border that is even more likely to contribute to serious abuses of human rights. In 1986, with the passage of the Immigration Reform and Control Act and the Anti-Drug Abuse Act, the INS was given enhanced arrest authority and increased resources and personnel.⁷ Four years later, the Immigration Act of 1990 incorporated a provision authorizing broader arrest powers for the INS as part of the federal government's efforts to interdict narcotics entering the United States.⁸ Even though the INS is now responsible for interdicting drugs, Border Patrol agents engaged in drug interdiction do not receive adequate training or supervision. As a Border Patrol agent testified last December, "they don't train us at all in drug interdiction."⁹

Frustrated by the unwillingness of immigration law enforcement authorities to rein in abusive agents, communities along the border have taken matters into their own hands. In July 1992, the El Paso City Council created a Border Patrol Accountability Commission. The creation of similar civilian review commissions is under consideration in cities throughout the Southwest.

In light of the overwhelming deficiencies described in this report and in our May 1992 report, Americas Watch supports the creation of an independent federal commission to receive complaints of abuse, review those complaints, hold public hearings when warranted, and pass its findings to the INS or Customs Service for disciplinary action.¹⁰

⁵ U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration* (Washington, D.C. 1980).

⁶ Testimony of Regional Border Patrol Chief Gus de la Viña before the U.S. Commission on Civil Rights, April 16, 1993.

⁷ Americas Watch, *Brutality Unchecked*, p.8.

⁸ *Ibid.*

⁹ *United States v. Michael Andrew Elmer, CR-92-456-TUC-JMR (D. Ariz. 1992)* (Transcripts of Proceedings, December 9, 1992), (testimony of Thomas Watson) p. 86 [hereinafter *Elmer* transcripts].

¹⁰ On May 13, 1993, Representative Xavier Becerra (D-CA) introduced the "Immigration Enforcement Review Commission Act," which would create an independent review commission to receive complaints, review allegations, and recommend disciplinary sanctions, when warranted. Initial co-sponsors of the bill included Representative Don Edwards (D-CA), Representative José Serrano (D-NY), Representative John Conyers (D-MI), Representative Ed Pastor (D-AZ), Representative Esteban Torres (D-CA), and Representative Luis Gutiérrez (D-IL).

II. THE SYSTEM'S FAILURES EXPOSED: THE CASES OF MICHAEL ELMER AND LUIS SANTIAGO ESTEVES

Last year's trials of Border Patrol agents Michael Elmer and Luis Santiago Esteves provided an abundance of information about the practices of Border Patrol agents in the field—information that is usually concealed from the public. Elmer was tried for murder and acquitted; Esteves was tried for rape and convicted.

Although the outcomes of the trials were different, both exposed serious problems with the Border Patrol's internal disciplinary system. In both cases, agents against whom there were serious prior allegations of misconduct remained on the force with predictably tragic consequences. As we detail below, these agents continued on active duty because the Border Patrol failed to investigate complaints adequately and sanction culpable agents.

The Elmer trial produced an additional damning revelation about the Border Patrol: agents routinely disregard the INS' firearms policy, thereby placing the lives of those with whom they come into contact, as well as their own lives, in serious danger. (*See*, Section III.E.1.)

A. Border Patrol Agent Michael Andrew Elmer¹

On the evening of March 18, 1992, a motorist alleges that Tucson Border Patrol Agent Michael Elmer assaulted him, with the motorist requiring stitches for one of his wounds.¹² Later that night, witnesses allege that Elmer shot at a group of 30 undocumented immigrants, wounding one of them.¹³ In violation of INS policy, neither of the incidents was reported by Elmer or the other agents who were present. Complaints lodged by the victims were ignored. In fact, neither of these incidents—nor allegations that Elmer had consumed and sold drugs seized during a raid along the border—would have been discovered if Elmer had not shot and killed an unarmed Mexican national in June 1992.

On June 13, 1992, Border Patrol Agent Thomas Watson reported the fatal shooting of Darío Miranda Valenzuela by his partner, Agent Elmer. In doing so, he broke the Border Patrol's traditional code of silence regarding agent abuse. The ensuing investigation and trial revealed the Nogales border region to be a modern day Wild West, where agents with little training and no supervision shoot with impunity at suspected drug smugglers, in violation of INS policy. (*See*, section III.E.1.)

According to the facts revealed at the trial, on the afternoon of June 12, 1992, Agents Elmer, Watson and three other Border Patrol agents were patrolling a remote canyon near Nogales, Arizona. Agents Elmer and Watson pursued three men whom they believed to be lookouts for drug smugglers. Watson fired warning shots over the head of one of the men they encountered, in violation of INS firearms policy.¹⁴ The three men then fled toward Mexico. Elmer shot at one of the men, Darío

¹¹ This account is based on information provided by the attorneys representing Darío Miranda Valenzuela's family—Jesús R. Romo Véjar, Isabel G. García de Romo, Michael W.L. McCrory, and Richard J. Gonzales, transcripts from the case of *United States v. Elmer*, [CR-92-456-TUC-JMR] (D. Ariz. December 1992)], and press accounts.

¹² Claim for Damage, Injury, or Death, filed by Rene Romero with the INS, February 4, 1993.

¹³ *Elmer* transcripts, December 4, 1992, (testimony of Francisco Salgado-Muñoz), p. 25.

¹⁴ INS Firearms Policy states, in part, "Firing a firearm should be done only with the intent of rendering the person at whom

Miranda Valenzuela, a dozen times. Two bullets struck Miranda, who was unarmed, in the back.

According to Watson's trial testimony, the two agents did not call for medical assistance, but instead considered planting a weapon on Miranda so it would appear to be a legitimate shooting. They also discussed how to dispose of the victim's body. Watson also testified that, when Elmer told him he had shot Miranda, "he was happy, the best way I could describe it, like somebody that had shot their first deer. He was elated, pumped up, kind of brag [sic], I got one."¹⁵ After shooting Miranda, Elmer shot at one of the other fleeing men. Elmer then dragged Miranda—who doctors estimate may have lived for 30 minutes after he was shot—into a gully and hid him behind a tree trunk.

Agents Watson and Elmer then joined the three other agents in the area and returned to the Border Patrol station without reporting the shooting. Instead, after their shift ended, the agents drank beer and talked in a parking lot across the street from the station.

Watson reported the shooting the next day, June 13, approximately 15 hours after it occurred. In his statement, Watson explained that he waited because he was afraid that Elmer would harm him if he reported the shooting the day it happened.

Elmer was arrested and became the first Border Patrol agent to be charged and tried for murder. Elmer's lawyer successfully portrayed Elmer's shooting of the unarmed man as an act of self-defense in a dangerous area of the border.¹⁶ Although acquitted on murder and other charges on December 16, 1992, Elmer is now facing charges stemming from a shooting incident in March 1992.¹⁷ (See below). On March 25, 1993, Miranda's family brought a wrongful death action against the U.S. government. They also filed a civil rights suit against the five agents involved in the June 12 shooting.

In April 1993, Watson was fired by the Border Patrol for waiting 15 hours before reporting the killing and other violations. He told the *Los Angeles Times*, "It's a big cover-up; I broke the code of silence and now they want to get back at me...I knew I was doing the right thing by turning him in for murder, even though I embarrassed them."¹⁸ The three other agents in the vicinity at the time of the Miranda shooting were not disciplined for failing to report the shooting and are believed to remain on duty.¹⁹

During the investigation into the Miranda shooting other abuses involving Agent Elmer came to light:

the firearm is discharged incapable of continuing the activity that caused the officer to shoot. Therefore, the firing of warning shots is prohibited." INS Administrative Manual Section 4210, p. 5.

¹⁵ *Elmer* transcripts, December 9, 1992, (testimony of Thomas Watson), p. 43.

¹⁶ One of the ironies of the trial lies in the allegations—uncovered during the investigation of Elmer after the Miranda killing, yet excluded from evidence during the murder trial—that Elmer had stolen, sold, and used drugs. While Elmer's successful defense was based largely on the image of Miranda as a drug scout, Elmer, carefully portrayed as an anti-drug hero, may have been involved with drugs.

¹⁷ Tessie Borden, "Jury clears border agent in alien's killing," *Arizona Daily Star*, December 17, 1992.

¹⁸ Sebastian Rotella and Patrick J. McDonnell, "A Seemingly Futile Job Can Breed Abuses by Agents," *Los Angeles Times*, April 23, 1993, [hereinafter Rotella and McDonnell, "A Seemingly Futile Job"].

¹⁹ Although internal disciplinary sanctions are kept secret, the attorneys for Miranda's survivors are unaware of any punishment or dismissal imposed on the three agents.

Rene Romero: Rene Romero was stopped by Border Patrol agents while driving in southern Arizona near Tucson at approximately 8:00 p.m. on March 18, 1992. As he later learned when he saw Elmer's photograph in the newspaper, one of the agents who stopped him was Elmer. According to Romero, Elmer pulled him from his car, threw him to the ground, handcuffed him, kicked him, hit him on the head with his gun and threatened to kill him.²⁰ Romero states that Elmer then pulled Romero's pants down and told him to "bend down as if [you're] going to get fucked," and then told Romero to "open up his ass." After he was searched, Elmer hit him in the stomach and ribs. The agents then took Romero to the Border Patrol station in Nogales.

Romero requested medical assistance, but the agents ignored him. More than five hours after his arrest, a Drug Enforcement Administration (DEA) agent interviewed him, at which time he again requested medical attention.²¹ Approximately 24 hours later, Romero was taken to Tucson and treated at the Federal Correctional Institution. He received five stitches for his head wound, which had become infected.

On February 4, 1993, Romero filed a personal injury claim against the Border Patrol. The claim states that the beating resulted in injuries to his upper body, neck and head. The claim also asserts that Romero suffered mental distress and humiliation.

Hindz Ridge shooting: At approximately 10:00 p.m. on March 18, 1992, roughly two hours after the Romero incident, Border Patrol agents were patrolling the Hindz Ridge area east of Nogales looking for drug smugglers. They were directed to an area where a surveillance team had spotted a group of 30 people. Six agents pursued the group, with Agent Elmer encountering them first. He began shooting between the legs and feet of the individuals he encountered, and shouting at them.²² Eventually Elmer realized that he was shooting at a group of immigrants, not smugglers. (Whether or not the group was made up of drug smugglers or immigrants, Elmer's alleged actions were a violation of INS policy.)²³ Francisco Salgado-Muñoz, one of the undocumented immigrants, later testified during the Elmer trial that he had been shot in the stomach and leg during the attack.²⁴

None of the agents present during the shooting reported it.²⁵ Two of the immigrants reported the

²⁰ Claim for Damage, Injury, or Death, filed by Rene Romero with INS, February 4, 1993.

²¹ Romero has stated that he reported the mistreatment he received to the Border Patrol and the DEA agent who interviewed him.

²² *Elmer* transcripts, December 3, 1992, (testimony of Andrew Priesner) and December 4, 1992, (Aurelia Serrano-Barajas and Francisco Salgado-Muñoz).

²³ INS policy states, in part, "A firearm may be discharged only as a last resort when the officer reasonably believes that there is the threat of imminent danger of loss of life or grievous bodily harm to himself or to another person. Any use of firearms by Service personnel must be within the guidelines of this policy, and be legally justifiable and reasonable under the circumstances." INS Administrative Manual Section 4210, p. 4.

²⁴ *Elmer* transcripts, December 4, 1992, p. 25 (testimony of Francisco Salgado-Muñoz).

²⁵ INS policy states, in part, "Any employee who discharges a firearm, or is involved in or observes a reportable shooting incident, shall verbally notify the first-line supervisor as soon as time and circumstances permit, but before the officer goes off duty....Employees who discharge a firearm, or are involved in a shooting incident, shall be required to provide a written report of the incident within sixteen (16) hours of the incident. Any other employee who observes a shooting incident, but does not discharge a firearm or is not directly involved in a shooting incident, shall be required to provide a written report of the incident before the termination of the shift." INS Administrative Manual Section 4210, pp. 9-10.

shooting to agents at the Border Patrol station,²⁶ but either those agents did not report the shooting to the Office of the Inspector General (OIG), or the OIG decided not to investigate. Under either scenario, the complaints reporting procedure failed. As a result of the information disclosed during the investigation and murder trial of Elmer, he is now awaiting trial on aggravated assault charges relating to the March 18, 1992 shooting.²⁷

B. Border Patrol Agent Luis Santiago Esteves¹

Evidence indicates that Luis Santiago Esteves' problems with law enforcement began years before he donned a Border Patrol uniform. While in the Army, Esteves was arrested for allegedly beating his first wife. Charges in that case were dropped.²⁹ When Esteves was prosecuted for the rape of two women last summer, his second wife, Lucille Maldonado testified that he had raped her, and threatened to rape her 10-year-old daughter.³⁰ Maldonado told the *Los Angeles Times*, "If they had done a real background [check], I don't think he would have made it," into the Border Patrol.³¹

Once on the force, Esteves was reported to have been involved in three incidents of sexual misconduct committed against women whom he first encountered while on duty. The first incident occurred on October 6, 1989. On that date, according to the court records,³² Edilma (Ima) Cadilla, a teacher and U.S. citizen, was travelling north along Highway 86 in Imperial County, California, when she was stopped at an immigration checkpoint. Agent Esteves inquired about her citizenship, determined that she was a U.S. citizen, and let her vehicle pass.

About five miles down the road, Ms. Cadilla noticed a vehicle approaching with flashing lights. She pulled over to the side of the road. The vehicle turned off all lights, except the parking lights, and

²⁶ *Elmer* transcripts, December 3, 1992, (testimony of Andrew Priesner), p. 17; December 4, 1992, (testimony of Aurelia Serrano-Barajas); p. 12; and (testimony of Francisco Salgado-Muñoz), p. 30.

²⁷ Tessie Borden, "Jury clears border agent in alien's killing," *Arizona Daily Star*, December 17, 1992.

²⁸ This summary is based on: review of the court records in *People v. Luis Santiago Esteves*, Case No. 14866, Imperial County, California (1992); interview of Mary Anne Carter-Birkman, Deputy District Attorney of Imperial County and prosecutor in the case on March 22, 1993, and an April 9, 1993 telephone interview of Edilma Cadilla.

²⁹ Patrick J. McDonnell and Sebastian Rotella, "When Agents Cross Over the Borderline," *Los Angeles Times*, April 22, 1993, [hereinafter McDonnell and Rotella, "When Agents Cross Over"].

³⁰ Americas Watch Interview with Mary-Anne Carter-Birkman, March 22, 1993; McDonnell and Rotella, "When Agents Cross Over."

³¹ McDonnell and Rotella, "When Agents Cross Over." The *Los Angeles Times* study of the Border Patrol concluded that in its efforts to expand personnel following the Immigration Reform and Control Act of 1986 (IRCA), the Border Patrol has often failed to perform adequate background investigations. The *Los Angeles Times* article details a number of cases of individuals with criminal backgrounds who were able to become Border Patrol agents, some with predictably disastrous results. *Ibid.*

³² The court records referred to throughout the discussion of Agent Esteves are from *People v. Esteves*, (Case No. 14866, Imperial County, California, 1992), p. 40 [hereinafter, *Esteves*]. The account of the harassment of Ms. Cadilla is based on sections of the Plaintiff's (State of California's) Opposition to Defendant's Motion to Sever in *Esteves*.

Esteves got out of the car and approached her, shining a bright flashlight in her face. Esteves asked Cadilla several questions which she answered, believing them to be official in nature. Esteves then asked Cadilla for her telephone number and talked to her about himself for fifteen minutes.

According to Cadilla, her boyfriend called Esteves' supervisor at the El Centro Border Patrol office the following morning to complain. The supervisor told him that if Esteves called, he should report it. At about 10:30 p.m. on October 9, 1989, Esteves called Ms. Cadilla. He asked her if she would be home for the weekend, and she said no.

Esteves told her that was "too bad" because he wanted to take her out dancing, get drunk and have her "sexually abuse his body." She told him she had a boyfriend and he then asked if she could fix him up with one of her friends. Esteves continued talking to Ima for approximately one-half hour. At that end of the call, Ima asked that Esteves not call her again.³³

After this call, Cadilla told Americas Watch, she called the supervisor with whom her boyfriend had spoken. She explained to him what had happened and he indicated that he knew Esteves. He reassured her that, as punishment, the Border Patrol would move Esteves from the checkpoint where Cadilla had been stopped to the Calexico, California border crossing. According to the *Los Angeles Times*, the Border Patrol took no disciplinary action against him.³⁴

Two months later, on December 16, 1989, twenty-year-old María was stopped by Esteves in Calexico,³⁵ who checked her immigration papers. Esteves, in uniform and driving a Border Patrol vehicle, asked María for her phone number, and then asked her out for a date that evening. Later that day she called him and left a message on his answering machine that she could not go out with him. After work, María went shopping. Esteves, still in uniform, went to her workplace and found out where she was shopping. He found her there. María agreed to go out with him, but said that he first would have to take her to her mother's house for permission. Esteves said that he would have to go to his house first so that he could change clothes. Once at Esteves' house they exchanged small talk.

Then Esteves told her he wanted her to "be with him." At this point María describes him "changing" in his attitude and he became angry. He told her she had to have sex with him. He told her to take a shower. Esteves positioned a gun on each side of the bed on two nightstands....³⁶

Esteves then told María to take her clothes off. Fearful because of the tone of his voice and the location of the two guns, she complied.³⁷ Esteves then proceeded to force an object into her vagina, placed his hands into various parts of her body, orally copulated her and forced her to have intercourse with him. María testified that she was afraid and never consented to any of the sexual acts. When Esteves left the room, María fled from the house, climbing a six foot fence and breaking her ankle in her haste to get away. Dressed only in Esteves' robe which she grabbed while heading out the door, she stopped a passing car and cried for help.³⁸

³³ *Ibid.*

³⁴ McDonnell and Rotella, "When Agents Cross Over."

³⁵ To protect the privacy of the victims, their names have been changed in the following accounts.

³⁶ People's Statement in Aggravation Pursuant to Penal Code § 1170(b), *People v. Esteves*, pp. 2-3.

³⁷ People's Opposition to Defendant's Motion to Sever, *People v. Esteves*, pp. 38-39.

³⁸ This account is taken from María's testimony, as it is summarized in People's Statement in Aggravation Pursuant to Penal

Once in the street, María was assisted and taken in by witnesses who notified the police. Shortly thereafter, Esteves was arrested and the local District Attorney's Office filed rape charges against him. While the case was pending, Esteves was suspended from the force. However, María failed to appear in court for Esteves' preliminary hearing. The District Attorney's Office was forced to drop the charges against Esteves for lack of a prosecution witness. Despite the evidence against Esteves, the Border Patrol reinstated him. Esteves returned to active duty nearly six months before the FBI completed its investigation into the incident.³⁹

In July 1991, Esteves was arrested again. This time he was charged with the rape of another woman, seventeen-year-old Rosa, whom he had stopped while on duty. According to Rosa's testimony,⁴⁰ on June 23, 1991 she and her mother were standing on the U.S. side of the border fence in Calexico talking to her grandmother and her sister who were on the Mexican side of the fence. Esteves, in uniform, approached the women and asked for their immigration papers. Esteves spoke with Rosa's mother for some time, and found out that Rosa had an upcoming deportation hearing. He offered to assist her in that hearing. The following day, he called her and told her not to worry about the deportation hearing. The next day, Rosa reports that he took her out for a ride. On June 28, Esteves took Rosa out again. He picked her up at 10:45 p.m., and bought her three mixed drinks. He then took her to the vacant apartment of a Border Patrol agent friend.

Rosa testified that shortly after they arrived, Esteves told her to take off her clothes. At that point, she indicated, Esteves became a different person. According to her testimony, he ordered her to masturbate. When she refused, he placed his hand on his gun. She then complied. Rosa testified that throughout the encounter, Esteves repeatedly slapped her and at one point he punched her. Rosa contends that Esteves then sodomized her. At one point he told her, "I know what I'm doing. And I am capable of everything and if I want I can rape your mother."⁴¹ According to Rosa's testimony, Esteves then told her that he wanted to sell Rosa to his friends. Finally, he told her that he wanted to have sex with her and another woman.

Rosa reported this assault to the police, who asked her to arrange a meeting with Esteves, herself and an undercover California Highway Patrol officer (who posed as her friend) at a local hotel. Although this sting operation failed, the police arrested Esteves. The District Attorney's Office prosecuted Esteves for the alleged rape of María and Rosa. Esteves was acquitted of the rape of Rosa, but the information she provided to authorities led to Esteves' arrest and conviction on three counts of felonious sexual misconduct against María, for which he was sentenced in July 1992 to 24 years in prison.⁴²

Unfortunately for both María and Rosa, this judicial resolution of Esteves' abusive career with the Border Patrol came too late. Had the Patrol thoroughly responded to Ima Cadilla's allegations two years

Code § 1170(b), *People v. Esteves*, pp. 2-3.

³⁹ McDonnell and Rotella, "When Agents Cross Over."

⁴⁰ The account that follows is based on Rosa's testimony at Esteves' rape trial. At that trial, Esteves was acquitted of the charges involving Rosa, and convicted of those involving María.

⁴¹ People's Opposition to Defendant's Motion to Sever, *People v. Esteves*, p. 37.

⁴² Esteves was convicted of Forcible Rape in violation of California Penal Code § 261(a), Forcible Oral Copulation in violation of California Penal Code § 288a(c) and Penetration by Foreign Object in violation of California Penal Code § 289(a). People's Statement in Aggravation Pursuant to Penal Code § 1170(b), *Esteves*, pp. 1-2.

earlier, the incidents involving both women might have been prevented. Unfortunately, as with Agent Michael Elmer, it was not until serious criminal charges were brought by prosecutorial authorities—with Esteves, for the *second* time—that the Border Patrol effectively recognized that Esteves was a problem agent.

III. ABUSES CONTINUE

The cases documented in this section represent instances of abuse which have occurred during the period after that covered by our last report, *Brutality Unchecked*. They date from January 1992 to the present. Based on our fact-finding mission, Americas Watch concludes that serious abuses continue to be committed by INS agents, and that abuses have also been committed by Customs agents in the course of their duties.

The cases documented in this report are not an exhaustive compilation of abuses since 1992. Instead, they represent the incidents that Americas Watch was able to document during a recent fact-finding trip and follow-up efforts. As we explain in Section IV, there are several important reasons why cases are systematically underreported to both governmental and non-governmental sources. For those reasons, Americas Watch suspects that the cases described in this section represent only a portion of the total number of abuses committed during the period examined. Nonetheless, these cases, and the response of immigration authorities to complaints lodged by victims, stand as an indictment of the operations of the forces investigated.

A. Physical Abuses During Apprehension and Detention

As we detail below, it is not uncommon for Border Patrol agents to abuse the rights of undocumented immigrants during their apprehension. The Border Patrol's assigned duty of pursuing and detaining undocumented immigrants is undoubtedly a difficult task. And, because many of those detained and returned to Mexico often re-enter the United States, the work of the Border Patrol can often seem futile. Unfortunately, the frustration which this apparent futility causes is often taken out on the undocumented, in many ways the ideal victims for the Border Patrol agent since they may be perceived by the agent as the cause of his frustrations. Additionally, the undocumented provide an easy target—they are close and defenseless. Nonetheless, no matter how great the frustration of Border Patrol agents may be, the abusive treatment that its officers sometimes afford to undocumented immigrants is inexcusable.

One particularly common manifestation of the discharge of frustrations by Border Patrol agents is the practice of assaulting immigrants who attempt to flee from agents. Sources told Americas Watch that, if an agent is forced to chase a suspected undocumented immigrant, he is likely to beat the detainee once he or she is caught. At a minimum, a detainee who makes an agent chase him or her will likely be detained longer as a punishment. One Border Patrol agent, who has been with the Border Patrol and INS for 31 years, told Americas Watch that agents try not to abuse detainees, but hold them longer for making them run. A San Diego-based Border Patrol agent told the *Los Angeles Times* that some supervisors tolerate, and even encourage, the punitive beatings of suspects who run away from agents. The agent termed the practice, "Thump 'em if they run."⁴³ The cases of Margarita Rodríguez,

⁴³ McDonnell and Rotella, "When Agents Cross Over."

the Nogales beating incident, Manolo Castellanos, Salvador Castillo and Guadalupe Ruiz (see below) are illustrative in this regard. Although possibly inspired by the high level of job frustration, these abuses are perpetuated by the official tolerance they receive by immigration law enforcement officials.

Other abuses, though perhaps related to the high level of job frustration experienced by INS agents, flow more directly from the dehumanization of undocumented immigrants which permeates the INS. In this regard, the remarks of one Border Patrol supervisor to his agents—remarks made in front of a visiting *Los Angeles Times* reporter—are illustrative: "Catch as many tonks as you guys can....Safely. An alien is not worth busting a leg."⁴⁴ ("Tonk" is the word used to refer to an undocumented immigrant and refers to the sound of an agent's flashlight striking an immigrant's head.)

The attitude embodied by the supervisor's advice is at the core of the human rights violations documented in this report and elsewhere. While many immigration law enforcement agents treat the people with whom they come into contact humanely and respectfully, far too many believe that the basic human rights of "tonks" and "aliens" are unimportant. This attitude is reinforced regularly as agents elude accountability for abuses they commit while apprehending and detaining suspected undocumented immigrants.

The cases of Hermelindo Sandoval, Jesús Morando, Juan Antonio Velásquez, Antonio Díaz and the unidentified street person battered in detention exemplify the kinds of abuses that occur when an agency institutionally dehumanizes immigrants. The abusive conduct in these cases is characterized by the arrogance and insensitivity of the offending agents, attitudes which should be expected when people are reduced to quasi-human "tonk" status. One should not be surprised that some agents become abusive when they are permitted virtually unlimited authority without fear of reprisal.

Hermelindo Sandoval Martínez: On the night of December 22, 1992, Hermelindo Sandoval Martínez states that he was doing a favor for his employer by helping his sister cross the border.⁴⁵ After crossing into the United States west of the San Ysidro point of entry, they waited for several hours to leave the border area. At about 3:30 a.m. on December 23, two Border Patrol agents approached Sandoval and the woman he had helped cross the border, Ana María Becerra. One of the agents hit Sandoval in the chest and the back with a flashlight. Sandoval tried to step away from the agent and was then handcuffed and pushed to his knees. The agent stood in front of Sandoval, pushed him backward and kned him in the chest. Sandoval asked the agent, "why are you hitting me?" and the agent replied, "I'm in charge here." He then picked up Sandoval and put him on the steep edge of the levee and threatened to push him over.

Sandoval was taken to the rear of the Border Patrol van. Once behind the van, the agent pushed him to his knees and kned him in the chest again. The agent then stood Sandoval up and hit him in the chest with his flashlight. The agent warned Sandoval that things would get worse for him if he told anyone about the beating. Sandoval, who was unarmed, was then frisked and put in the van. Becerra, who was detained by the second agent, witnessed the beating and told him to stop hitting Sandoval.

Sandoval and Becerra were then taken to the San Ysidro detention center where they were held for several hours. While he was detained, Sandoval requested medical attention, but his request was ignored. He reports that he felt as though something in his stomach might burst and that he cried from the pain.

⁴⁴ Rotella and McDonnell, "A Seemingly Futile Job."

⁴⁵ The following account is based on a March 21, 1993 interview with Hermelindo Sandoval, an affidavit provided by the doctor who treated Sandoval, phone interviews with Sandoval's attorney and doctor, and press reports.

Sandoval was placed on a bus to return to Tijuana, when the bus driver noticed that he was crying and asked what was wrong. Sandoval told the driver that he had been beaten by the "migra."⁴⁶ When they reached the border, the driver told Sandoval and Becerra to stay on the bus. While he stayed on the bus, a succession of three different agents questioned Sandoval about what had happened. When Sandoval stated he had been beaten, the agents asked him what he had done to deserve the beating. He told each agent he needed medical attention and each agent told him to wait.

Sandoval was then returned to the San Ysidro detention center and locked in an individual cell. Sandoval told the agents at the detention center that he could not stand the pain and wanted to be returned to Mexico to get help. His pleas were ignored for another hour until he was taken to Chula Vista Community Hospital. He was placed under observation until, on the 10th day of his hospitalization, tests showed his condition was worsening. He then underwent an operation to repair damage that was done to his pancreas.

The Border Patrol did not respond to Sandoval's allegations until January 5, 1993, when it released a statement disputing Sandoval's account of the incident and claiming that Sandoval had injured himself by falling into a drainage ditch. Sandoval's physician told Americas Watch that his injuries were consistent with his account of the beating. He further stated that while it was conceivable the injuries were caused by a fall, he would have had to have fallen on an object of a particular size to damage his pancreas as it was injured.

The FBI initiated an investigation after reading about the incident in the newspaper.⁴⁷ An FBI spokesman told a reporter that the FBI had not received the information that the Border Patrol claimed it had passed to the Bureau.⁴⁸ The Office of the Inspector General of the Justice Department also began an investigation. Although the identify of the agent responsible for the assault is known by the OIG and FBI, the agent reportedly is still on active duty. To date, the agent's name has not been disclosed to either Sandoval or his attorney. Sandoval's attorney filed a civil suit against the INS on March 30, 1993.

Jesús Morando: On February 20, 1993, Jesús Morando, a resident alien in the United States since 1961, and his wife, Rita Cuen Morando, both approximately 50 years old, were travelling with 16 others in a caravan of three vehicles on their way from Nogales, Sonora, (Mexico) to Laughlin, Nevada.⁴⁹ At 6:10 a.m., one of the cars in the caravan was pulled over by the Border Patrol. The two other vehicles in the caravan pulled over as well.

Two Border Patrol agents emerged from their vehicle with their guns drawn. The agents were yelling at Morando to do something, and he thought they wanted him to leave, so he began to pull away. Morando then realized that this was not what the agents wanted and pulled the car back and parked it again. The Border Patrol agent who had been driving approached Morando's car with his gun drawn, yelling obscenities. He struck the hood of Morando's car repeatedly with his gun, making four or five dents. He then hit his gun against the car's fender, and threw it at the headlight, breaking the left signal light.

⁴⁶ "Migra" is a slang term used in the border region to refer to agents of the INS.

⁴⁷ Leonel Sánchez, "FBI probes Border Patrol over claims agents beat immigration, violated rights," *The San Diego Union-Tribune*, January 6, 1993.

⁴⁸ *Ibid.*

⁴⁹ This account is based on a March 24, 1993, interview with Jesús Morando and his wife, Rita Cuen Morando and a Claim for Damage, Injury, or Death filed by the Morandos with the INS, May 4, 1993.

At this point, Morando's wife began yelling in Spanish for the agent to calm down and told him that they had papers.⁵⁰ The agent replied, "You shut up. This isn't your business." Others in the caravan later told the Morandos that they remained silent because they were frightened.

The agent picked up his gun from the ground, and Morando started to get out of his car. The agent then grabbed Morando by his collar, pointed his gun into Morando's upper chest, and dragged Morando by his collar around to the front of the car. When Morando saw the damage that the agent had done to his car, he told the agent he would have to pay for it. The agent, who still had his gun to Morando's chest, asked Morando if he wanted to die in jail. Morando asked, "why would I go to jail?" The agent told Morando that he did not break the car's signal light and that Morando's car was fine. He then released Morando.

A passenger in another car in the caravan approached Morando's car to see what was happening. The agent became angry with the passenger's intervention and put Morando into the Border Patrol vehicle and called for assistance. After the second Border Patrol vehicle arrived, Morando and the rest of the caravan were allowed to leave.

On May 4, 1993, the Morandos filed a claim against the INS, stating that they had suffered several stress-related physical ailments as a result of the encounter and that their civil rights had been violated.

Margarita Rodríguez, Socorro Rodríguez de Vásquez and Evangelina Alcocer: On June 30, 1992, Rodríguez and her two-year-old son, Abraham, were walking along the sidewalk adjacent to the Paisano apartment complex in El Paso.⁵¹ Rodríguez's 20-year-old step-daughter, Socorro Vásquez, sat on a nearby bench with her seven-month-old daughter in her arms. Vásquez had just called her sister Evangelina Alcocer from a nearby phone to tell her to meet them at the Paisano apartments.

At about 3:00 p.m., Agent Mario Bellamy of the Border Patrol arrived at the Paisano apartment complex.⁵² Bellamy was not dressed in uniform (although witnesses recounted that he was wearing a badge). Bellamy asked Vásquez if she had papers. Vásquez, frightened, responded "no." In fact, Vásquez told Americas Watch she had documents authorizing her to cross into the United States.

⁵⁰ All of the individuals in the caravan were lawfully within the United States.

⁵¹ This summary is based on Americas Watch's interview of Ms. Margarita Rodríguez and Socorro Rodríguez de Vásquez on March 26, 1993. Additional sources include statements given by the two women to the Mexican Consulate, numerous newspaper clippings, and a summary of witness statements gathered by the El Paso Border Rights Coalition.

⁵² Before the events of June 30, Bellamy was alleged to have been involved in several incidents of abusive behavior. According to the *El Paso Herald Post*, on March 4, 1992, Bellamy and other Border Patrol agents confronted a group of Mexican citizens outside a bar in Chula Vista, brandishing firearms. See, Julian Resendiz, "Border Patrol agent has record of abuse, Mexico says," *El Paso Herald Post*, February 4, 1993. On July 27, 1991, according to a statement given to the Mexican Consulate in El Paso by María de Lourdes Carranza de Montoya, Agent Bellamy caused injury to Ms. Carranza's back by forcing her to sit on the floor of a van while he drove at high speeds in pursuit of suspected undocumented immigrants. Despite her repeated complaints, Bellamy allegedly continued his reckless driving, telling her afterward she had no right to complain since she was a "wetback." According to another complaint filed with the Mexican Consulate, on July 16, 1990, Agent Bellamy pummelled a Mexican fruit vendor, breaking the man's nose against the side of a vehicle and threatening him at gunpoint. McDonnell and Rotella, "When Agents Cross Over." The U.S Department of Justice investigated this last complaint, but never disclosed the results of its investigation. (Paul Salopek, "Punishment in Border Patrol: a spotty record," *El Paso Times*, December 6, 1992). "Well-placed sources" told the *El Paso Times* that Agent Bellamy "made headlines" in 1988 when he drew a pistol in a bloody fistfight with another agent. These sources indicated that Bellamy was discharged and then reinstated after that incident. (*Ibid.*)

Bellamy handcuffed Vásquez by one hand. A woman bystander suggested that Vásquez give her the baby she was carrying, which she did.

Meanwhile, two-year-old Abraham ran away when Agent Bellamy approached the two women. Rodríguez chased after her small son. Upon seeing Rodríguez run, Bellamy left Vásquez, with one arm in handcuffs, standing in the middle of the street. He caught Rodríguez after she caught up to her son, and struck her with a karate-style chop on the back of her neck. He continued to hit her.

At this point, Evangelina Alcocer arrived in her car. Upon seeing her mother being beaten, Alcocer stopped her car and got out. She ran over to where Bellamy was hitting her mother and wrapped her arms around him in a bear hug, imploring him to let her mother go. "She understands words," Alcocer told him. Bellamy let Rodríguez go and she immediately fled, this time with Abraham on her shoulder. Bellamy then dragged Vásquez, to his vehicle and brusquely pushed her inside, bruising her foot in the process. Bellamy then got in the car, backed up, and began to chase Rodríguez as she headed towards the interior of the apartment complex. Bellamy drove after her for a while, then got out of the car and chased her on foot.

When Bellamy caught up to Rodríguez he began to beat her, knocking her to her knees. By this time, a group of people (mostly women) had assembled, and were watching the beating. Several of them yelled for him to stop, but apparently none intervened. Some of the women who were present went into the complex to get their husbands. When the men arrived on the scene, Bellamy stopped hitting Rodríguez. Nearly nine months after the incident, she told Americas Watch that she still suffers from pain in her upper back that makes it impossible to carry heavy bags.

Bellamy then went to the woman who had been holding Vásquez's baby, asked her what she was doing with the child, and took her from the woman. Bellamy brought the child to Vásquez, then proceeded to Alcocer's car and took the keys out of the ignition. Alcocer approached Bellamy and asked for her car keys. Bellamy threw the keys to the ground and told Alcocer to pick them up. When Alcocer bent over to do so, Bellamy drew his gun and placed it in the back of her neck. When Alcocer stood up, she sprayed Agent Bellamy in the face with mace that was attached to her key chain.

Shortly thereafter, a number of Border Patrol agents arrived in approximately seven vehicles. The three women were detained by the arriving agents. After being detained and questioned for several hours, Rodríguez and Vásquez were taken to Mexico. Evangelina Alcocer spent the weekend in detention. The following morning, apparently due to the outrage of witnesses at the Paisano complex, authorities of the Mexican Consulate in El Paso retrieved Rodríguez and Vásquez from Ciudad Juárez and took them to render statements about what had occurred.

Subsequently, the FBI investigated the incident and forwarded its report to the Civil Rights Division of the Justice Department, which reviewed the record to determine whether Bellamy had violated Rodríguez's civil rights. In a letter dated December 7, 1992, the Civil Rights Division concluded that it could not take further action because the "matter does not constitute a prosecutable violation of the federal criminal civil rights statutes."⁵³ The letter, which followed a "careful review" of the FBI report, was addressed to *Mr. Vásquez De Rodríguez* (instead of *Ms. Rodríguez de Vásquez*). In the meantime, Alcocer was prosecuted for assaulting a federal officer. In October, Alcocer pleaded guilty and was fined \$100 and ordered to perform community service. Several sources told Americas Watch that Bellamy continues to serve on active duty with the Border Patrol.

⁵³ Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division and Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice to Ms. Margarita Rodríguez and Mr. Socorro Vasquez de Rodriguez, December 7, 1992.

Juan Antonio Velásquez: According to Velásquez, he was walking towards the Bridge of the Americas in El Paso at about 10:30 p.m. on February 21, 1992, when two Border Patrol agents stopped him for questioning.⁵⁴ Velásquez did not have his "green card" with him, but did have the card number written on a piece of paper. When he gave the piece of paper to one of the agents, they said the number meant nothing and threw it on the ground.

The agents accused Velásquez of being a smuggler and told him to put his hands on the Border Patrol's vehicle, a Suburban van. One of the agents, who later identified himself to Velásquez, kicked Velásquez's legs apart as he leaned against the vehicle and handcuffed him. When the agent instructed him to get into the van, Velásquez refused, stating he was a resident alien. The agent then hit him once on his right side, below the ribs. Velásquez was then taken to the detention center at the bridge.

Although his handcuffs were removed for the drive to the detention center, they were replaced when he arrived. After he had handcuffed Velásquez, the agent punched him again, knocking him backwards to the ground, hurting his arms and causing his wrists to bleed. When Velásquez and the agent entered the detention center, the latter pulled Velásquez's arms high behind him, and pushed his head down, which further exacerbated the injury to his left hand and arm.

Velásquez told Americas Watch that he was questioned at the station by other Border Patrol agents until the arresting agent returned and reported that Velásquez had a "green card" and could be released. Velásquez told one of the agents that he had been mistreated by the arresting agent. He also complained directly to the agent, who replied that he could not do anything about his mistreatment and showed him his name plate and badge.

After he was dropped at his house by the arresting agent's partner, Velásquez returned with his wife to the Border Patrol office to complain about his treatment.⁵⁵ At the Border Patrol office the couple asked to talk to a sergeant and were forced to wait for an hour and a half, during which time the agents at the station were sarcastic and made fun of them. Velásquez gave the sergeant the arresting agent's name, and the sergeant told him to go to Vista Hills Medical Center. The sergeant said that an investigator would contact Velásquez within three days.

Velásquez went to the medical center the next day and had x-rays taken of his arms and ribs. The examination showed damage to the tendons in his left arm, which required physical therapy for two months.

Mr. and Mrs. Velásquez waited for a month without receiving a call from an investigator before they decided to see a lawyer. In June, the lawyer advised Velásquez to return to the same Border Patrol office at the bridge with a newspaper reporter who was investigating Border Patrol abuses. The reporter waited outside the office and put a wiretap on Velásquez.⁵⁶ Velásquez spoke to two supervisors and neither informed him that he could talk directly to the Department of Justice's Office of the Inspector General or to the FBI, even after Velásquez asked one of them if he should report the incident to anyone else. Velásquez was told that an inspector would contact him in two or three days at his house.

⁵⁴ The following account is based on a March 26, 1993 interview with Juan Antonio Velásquez, an interview with Velásquez's attorney, and press reports.

⁵⁵ Velásquez's wife told Americas Watch that she had gone looking for Velásquez after he was arrested and a witness told her he had seen him being beaten and detained by a Border Patrol agent. The man has now volunteered to serve as a witness in any case against the Border Patrol agent.

⁵⁶ See, Paul Salopek, "Tapes show flawed complaint process," *El Paso Times*, December 7, 1992.

Velásquez told Americas Watch that no one from the Border Patrol or the INS had contacted him as of March 1993, some nine months after his second visit to the Border Patrol office.

The FBI interviewed Velásquez once, and has reportedly sent its findings to the Civil Rights Division of the Department of Justice. Velásquez's attorney believes that the case is now pending but that Agent accused agent remains on active duty.

Velásquez had worked at a food factory but he alleges that he lost his job due to the injury to his left arm. He is now working at a clothing factory. In August 1992, he filed a civil suit against the Border Patrol, claiming permanent damage to his arm.

The Velásquez case illustrates the arrogance of many Border Patrol agents. Not only did the agent batter Velásquez, but he also showed Velásquez his name plate as he told him that he would not be affected by Velásquez's complaint about mistreatment. Velásquez's futile attempts to report the incident demonstrate the contempt many agents have for persons who want to file complaints. Although he sought to report the incident to three Border Patrol supervisors on two separate occasions, each time the officials either would not accept his complaint or gave him inaccurate information about how to submit a complaint.

Nogales beating incident: On May 22, 1992, a young mechanic from Nogales, Sonora (Mexico), crossed the border to Nogales, Arizona to purchase some auto parts.⁵⁷ He was riding his bicycle along Grande Avenue, when he was stopped by two Border Patrol agents in an official vehicle. The two agents shouted at the man to stop and lie on the ground. When he failed to do so, they got out of their car and attacked him, causing a fracture to his right leg.

The man was later taken to the Florence Service Processing Center (a drive of more than two hours). At some point during his processing, his personal belongings were taken from him, including his asthma inhaler. The young mechanic complained to INS authorities at the Florence Center about pain in his leg, and sought the return of his inhaler, but they ignored his requests. He then suffered an asthma attack that resulted in loss of consciousness. At this point, INS authorities took him to a hospital in Florence. He told the physician attending him about the pain in his leg. The physician told him that he thought the leg might be broken, but that x-rays would be necessary to make that determination. Despite the doctor's concern, the INS personnel at the hospital took him back to the Florence Center before x-rays could be taken. The man asked to see the doctor at the Florence Center. After some delay, this doctor, without taking x-rays, told him that his leg was not broken and gave him aspirin and crutches.

Soon thereafter, he was brought before the immigration judge at the Florence Center in the afternoon without having been placed on the deportation calendar. Two immigration workers were present. They stayed for the man's appearance, because they suspected something unusual might have occurred.⁵⁸ The man appeared on crutches, at which point the presiding judge jokingly asked whether

⁵⁷ The following version is based on interviews with Lynn Marcus, Director of the Southwest Refugee Rights Project and Katie McCormick, a second year law student at the University of Arizona School of Law who worked for the Project in the summer of 1992. The man involved requested anonymity through his attorney.

⁵⁸ Katie McCormick told Americas Watch that she suspected something unusual for two reasons. First, she said that the experience of personnel of the Florence Immigration and Refugee Rights Project FIRRPP was that the INS sometimes brought individuals before the judge without placing them on the calendar if there was something irregular about the case. Second, at the Florence Center during this time, deportation hearings were held in the morning. Representatives of the FIRRPP attended morning sessions in order to aid any detainees seeking assistance, but usually were not present in the afternoon. Their experience was that the INS often scheduled deportees for afternoon hearings (when FIRRPP staff were not present) when their

the INS had been beating him in detention. The man responded no, and indicated that the Border Patrol was responsible. The judge apologized, and allowed the immigration workers to interview him.

The INS returned the man to Mexico. After returning, the man had his leg x-rayed. The x-rays showed that the leg was broken.

Antonio Díaz: According to information received by the American Friends Service Committee, on October 9, 1992, Antonio Díaz was straddling the border fence near the San Ysidro Port of Entry when two Border Patrol agents arrived in a van. When Díaz attempted to turn around and climb over the fence back into Mexico, the two agents grabbed his legs, and pulled him off the fence on the U.S. side. As the agents pulled Díaz down, and he held onto the top of the fence, his left middle finger was severed. The severed portion of the finger fell on the ground on the Mexican side of the border.

Díaz was detained for approximately an hour, face down on the ground, while agents told him he should return to Mexico for medical treatment. Díaz insisted that the agents get him medical attention. After an hour delay, the agents took Díaz to a hospital and left him there. The delay in medical treatment reportedly resulted in an infection and severe swelling of his left hand.

Manolo Castellanos Mora: Manolo Castellanos Mora and another man, both undocumented Mexican nationals, were heading toward the border in southern Arizona, near Yuma, when they were apparently spotted by Border Patrol personnel who sent a helicopter to fly over them.⁵⁹ The chopper was flying low overhead, shining a bright light on the men. Castellanos and his companion ran under a bridge. A Border Patrol vehicle pulled up and an agent got out of the car.

The agent struck both men with his flashlight. Castellanos alleges that the agent struck him on the head, arms, and body with the flashlight, and then kicked him in the buttocks and the legs once Castellanos had fallen to the ground. He also reports that the agent also struck his friend in the face with his flashlight. The blow caused the man's face to bleed, and Castellanos took off his shirt and gave it to his friend to stop the bleeding. Castellanos' friend required 12 stitches to close the wound caused by the Border Patrol agent's blows.

The version offered by the agent does not differ significantly. The agent claims that the two men were running at him:

The last time I was placed in this position I had my left ear partially severed taking 46 stitches to reattach. Having this in mind I swung my flashlight at the first alien, striking him above the right eye and pushing him down. At the same time using the returning momentum I struck the second alien on the shoulder. The second alien then turned to flee. At that time having dropped my flashlight I struck him with my hand held radio. That failing to stop him, I kicked him behind the knee to put him down. At this point both subjects offered no further resistance...⁶⁰

Afterwards, according to the agent involved, first aid was administered.

Even if the agent's account of this incident is accurate, the practice of battering suspected undocumented immigrants to detain them is unacceptable. The use of radios or flashlights as weapons is an unwarranted use of force against individuals who appear to pose no immediate threat to the agents

situation was irregular. (Telephone interview with Katie McCormick, May 5, 1993).

⁵⁹ The following version is based on information provided by the Southwest Refugee Rights Project. The man who accompanied Castellanos requested anonymity through his attorney.

⁶⁰ This information comes from the I-213 (Record of Deportable Alien) form filed by the agent involved in the incident.

detaining them.

Beating of Street Person: On February 20, 1993, an elderly street person was beaten by immigration agents while he was held at a detention center south of San Diego, a witness told Americas Watch. The incident began when a female immigration agent began using abusive language and yelling at the detainees, instructing them to sit on three benches. There was not enough room for all of the detainees on the benches, and the elderly street person, whom the witness thought might be an alcoholic or mentally ill, stood apart from the others who were trying to sit on the benches. When the female agent saw that the elderly man was not complying, she left the detention cell and returned with two more agents. One of the agents removed his watch and put it on the counter before entering the cell.

One of the agents then asked the street person, in Spanish, "What's wrong with you that you don't do what we say?" The street person replied that he could not fit on the bench. One of the agents told him that he was asking for trouble and asked if he wanted a fight. The street person then sat on the floor of the cell and put his head down. The agent told him that he should get up or the agent would get him up. The street person did not respond. One of the agents then grabbed his clothes, punched and kicked him, and threw him on the ground. He was then handcuffed and dragged on the floor by two of the agents while the other agent hit him. When the other detainees attempted to help the street person, the agents warned them that they should not get involved or they would get the same treatment.

Salvador Castillo: On March 7, 1993, Salvador Castillo, a 24-year-old Salvadoran, was detained and beaten by a Border Patrol agent in Balboa Park in San Diego, California.⁶¹ Castillo, who was so badly beaten that he could not walk and had to be placed in the Border Patrol van by the arresting agents, told Americas Watch that he believes he was beaten because he made the agents chase him.

According to Castillo, an undocumented immigrant, he was at Balboa Park when two Border Patrol vehicles arrived. One agent got out of the van and pursued him when he fled on foot. When the agents apprehended him, one pulled Castillo's arms behind him and another agent pushed Castillo's body over the front of a Border Patrol vehicle, forcing his face onto the car's hot hood. Castillo asked the agent to release his face from the hood because it was burning him; the agent told him to "shut up." The agent then put Castillo face-down on the ground, handcuffed him, pulled his handcuffed arms up and kned him in the back of his knee, banging his knee against the ground. At this point he yelled at Castillo, saying, "Don't look at me!"

When other agents arrived, the agent who was beating Castillo explained that Castillo was Mexican and that he had made the agent run. When the agents tried to take Castillo to their van, his injured leg prevented him from walking. The agents took Castillo to the San Ysidro detention center. He did not complain about the beating or his injury because, he told Americas Watch, "no one complains, that's just what happens." During a random interview at a Tijuana shelter, he showed Americas Watch a scar near his left eye and a bandaged knee, both of which he alleges are results of the injuries received during the incident.

Guadalupe Ruiz: Guadalupe Ruiz told Americas Watch that on April 4, 1993, he and another man were walking towards an immigration checkpoint in San Clemente, California, trying to avoid Border Patrol agents when an agent grabbed him and threw him to the ground.⁶² The agent struck Ruiz on the head and handcuffed him. The agent then picked Ruiz up by the hair and dragged him to a tree. Throwing him against the tree, the agent began asking him what [contraband] he had. Ruiz responded that he had nothing. The agent then struck Ruiz on the back and in the groin.

⁶¹ The following account is based on a March 21, 1993 interview with Salvador Castillo.

⁶² This information is based on two telephone interviews with Guadalupe Ruiz on April 7 and April 8, 1993.

Ruiz told Americas Watch that he was taken to a vehicle and turned over to another agent. This agent also grabbed him by the hair and threw him in the Border Patrol vehicle. Ruiz was given a form to sign, which indicated that he had the right to an attorney. When Ruiz asked about this right, the agents told him that they did not have time for that. Ruiz signed the form and was taken to the border and returned to Mexico.

B. Other Reported Incidents of Abusive Treatment by Immigration Enforcement Authorities

Cases from the Human Rights and Citizen Protection Ombudsman, Tijuana, B.C., Mexico: The Office of Human Rights and Citizen Protection (OHRCP), a governmental monitoring group, receives, investigates and documents allegations of human rights abuse committed on both sides of the U.S.-Mexico border. The following abuses were alleged by the complainants and documented by the OHRCP to have been committed by U.S. immigration authorities.

- **Andrés Aguirre Benítez:** a 24-year-old laborer and Tijuana resident from Mazatlán reported that he was arrested in Imperial Beach, California on March 29, 1992, at about 11:00 p.m., by two immigration officials. The officials took him to their offices, where they asked him to sign a voluntary departure form. When Aguirre Benítez asked to see a copy of the form, one agent became enraged, lifted him by his collar, and threw him into a holding cell, causing him to hit his head and lose consciousness. A medical examination performed the following day indicated that he suffered from two hematomas of approximately two centimeters in diameter in the back of the skull.
- **René Andrade Arcota:** Andrade, a 30-year-old solderer from Guadalajara, Jalisco, was crossing the border at the point known as "El Bordo" on June 23, 1992 at about 2:00 a.m. when he was stopped and placed inside a Border Patrol vehicle. When the agents stopped to detain other suspected undocumented immigrants, Andrade fled on foot. Border Patrol agents followed him and eventually caught him a second time.

When the agents caught Andrade, the agent from the passenger seat threw him against the right side of the vehicle. The agent then forced him to open his arms and legs and beat Andrade with his nightstick on the head. The agent who had been driving also beat Andrade. When the agents stopped beating Andrade, they realized that they had opened five wounds on his head. At about 2:30 a.m., the agents took Andrade to a private home where his wounds were treated. Andrade believed that it was a home, and not a clinic, because of the furniture inside and the fact that the woman who took care of him wore a bathrobe. The woman in the bathrobe who received Andrade when he arrived attended to his injuries competently: she anesthetized his wounds and then sutured them. After being treated, Andrade was taken to the border and turned over to the Grupo Beta, the Mexican police agency responsible for patrolling the border strip in the Tijuana area. Andrade was treated by a Mexican doctor on June 26 for the injuries caused by his beating.

- **Roberto Dueñas Guerrero:** On January 7, 1992, Dueñas, a 37-year-old mechanic, was crossing the border with a paid guide when he was intercepted by four Border Patrol agents at the Tijuana border crossing. One of the agents, a tall well-built Latino, grabbed Dueñas by the shoulders and kicked him with the point of his cowboy boots, breaking a rib. The agent then pushed Dueñas' head into dirty water, forcing him to drink it, and called him "Mexican dog" and "pig." Dueñas filed a complaint with the Grupo Beta and the Ministry of Foreign Affairs of Mexico.

Casa Scalabrini shelter, Tijuana, Baja California, Mexico: The Casa Scalabrini is a shelter affiliated with the Catholic Church that provides shelter for immigrants in transit in Tijuana. The shelter provides temporary lodging to adults, many of whom have either recently returned from the United

States or who intend to cross the border. When shelter staff receive guests, they inquire whether they were mistreated during their migration. Incidents of abuse by authorities (from Mexico, the United States or elsewhere) and private citizens are noted in summary form. Below are the statements of several individuals who claim to have been the subject of abuse by immigration authorities:⁶³

- Manuel, a 27-year-old technical worker reported that on January 3, 1993, at about 10:00 a.m., he was fixing an automobile in Salt Lake City, Utah, when two people who appeared to be from the Border Patrol arrived. They beat him and forced him into a patrol car, taking and destroying his travel documents. The agents, beat him and stole approximately \$330 dollars from him before returning him to Mexico. Manuel identified the two agents by name in his statement.
- Oscar Antonio, an 18-year-old peasant from Honduras reported that he was crossing the border with a 17-year-old pregnant woman at about 1:00 a.m. on November 30, 1992, when a Border Patrol agent hit him and threw the young woman to the ground. Oscar Antonio began to run, but fell to the ground and passed out when an agent struck him on the neck from behind. When he regained consciousness, Oscar Antonio tried to cross over the fence to Tijuana, but the agent threw him against the fence, causing him to strike his right cheek. Afterwards, he was returned to Tijuana.

C. Customs Services Abuses at Points of Entry

Rafaela Rivera: At about 5 a.m. on February 8, 1992, Customs agents at the Paso del Norte Bridge check point stopped Rafaela and Raymundo Rivera as they returned home to El Paso from Juárez.⁶⁴ A Customs agent approached their car and asked Rafaela Rivera, who was driving, to open the trunk for inspection. When the agent began hammering inside the trunk, Rivera asked what he was doing; he replied that he was doing his job. Another agent approached Rivera's car and told her to move to where he was standing. When Rivera looked back to see what the agent inspecting her trunk was doing, the second agent grabbed her left arm and twisted it behind her back. He then pushed her forward onto her car. Rivera complained that he was hurting her. The agent holding her then walked her toward a checkpoint booth with her arm still twisted behind her back. She was screaming for the agent to let her arm loose and kicking backwards to get the agent off her. Her husband, who was now detained by the other agents, was also yelling for the agent to let her go.

One of the other agents told Rivera to calm down, but she replied that he was hurting her arm and she could not calm down until he let her go. One of the agents then told the agent detaining Rivera to calm down. The agent then released her arm.

Rivera called the El Paso police twice before they arrived at the scene to investigate the incident. Before they arrived, a Customs supervisor asked her what had happened. She told him and he apologized for the actions of the agents but did not advise her that she could make a complaint.

An ambulance arrived and took her to the hospital, where a cast was placed on her severely sprained arm. At the hospital, the police questioned her and told her she could talk to an attorney.

An investigator with the Office of Internal Affairs of the Customs Service arrived at the scene after Rivera had been taken to the hospital. He took the statements of the Customs agents, but never contacted Rivera, even though her address and telephone number were listed on the police report.

⁶³ The full names of these complainants are not included, since we were not able to contact them to determine whether they desired confidentiality.

⁶⁴ This account is based on a March 25, 1993, interview with Rafaela Rivera and press articles.

A few days later, Rivera returned to the bridge checkpoint where the encounter had occurred to find out whether the agent who assaulted her had been disciplined. She was told that he had been suspended. Customs officials later stated that she had been misinformed and that the agent was still on active duty.⁶⁵

The Civil Rights Division of the Department of Justice reviewed the findings of the FBI, which investigated the case, but declined to prosecute.

Francisco Jayme:⁶⁶ Jayme, a 32-year-old used car dealer in El Paso, Texas, told Americas Watch that on January 16, 1993, he drove a car he had recently purchased in Ciudad Juárez, Chihuahua (Mexico), across the Bridge of the Americas to El Paso. A Customs agent checked the license plate on the car and found that it did not match the vehicle. Jayme explained to the agents that he had recently purchased the car and was unaware of the problem. As a result, the agent sent Jayme to the inspection center. Once there, Jayme was told that Customs officials would need to check whether the car was stolen. In the meantime, Jayme was detained inside while his name was run through Customs' computer files.

Three Customs agents told Jayme to go to a holding cell. They made him empty his pockets and stand against the wall with his hands up. No matter where he held his hands, one officer told him that he wasn't doing it right. This continued for a while, and Jayme became nervous. He told Americas Watch that he was afraid that he was being "set up," and that the agent would say that he tried to attack them with his hands. Jayme suggested that the agents handcuff him to eliminate any problem with his hands. The agent instead placed Jayme's hands behind his back, locking his fingers together.

The agent then patted Jayme down and found nothing. He made Jayme take off his shoes. The agent then pushed Jayme against the wall, and ordered him to take off his clothes so that he could be strip searched.

Jayme questioned the order, and asked to see an attorney. The agent refused, stating that because he was not under arrest, Jayme had no right to an attorney. He also told Jayme that if he did not undress, the agent would bring in seven other agents to undress him. Jayme stripped to his underwear. The agent directing the strip search told Jayme he also had to take off his underwear. Jayme eventually agreed. When he did so, he noticed that the agents were amused. They made him bend over and squat down. They told him he had to bend over so that they could see what was between his legs. Jayme told Americas Watch that he felt humiliated, not so much by the process itself, but by the fact that the agents enjoyed his discomfort and found it entertaining. After having him bend over naked, the agents allowed him to dress and walked away laughing.

Jayme was left alone in the cell for about an hour. Afterwards, he was given a citation for false registration by an El Paso police officer who had been waiting outside for him. Jayme started to leave, but decided that he should report the rough treatment and unjustified strip search to someone at the Customs office. He walked back inside and attempted to complain. Shortly after 4:00 pm, Jayme spoke with a supervisor (whom he identified to Americas Watch) who told him that the shift had changed, and that he could not accept a complaint. Instead, he directed Jayme to the Customs office on Viscount Street but did not tell Jayme who to talk with nor did he provide him with the address or phone number of the Viscount Street facility. A few days later, Jayme returned to the same location and spoke with

⁶⁵ Denise Bezick, "Woman alleges customs abuse," *El Paso Times*, February 12, 1992.

⁶⁶ This information is based on an Americas Watch interview with Francisco Jayme, and a statement given to the Border Rights Coalition of El Paso on March 22, 1993.

another supervisor. This supervisor could not help Jayme identify the agent responsible and, according to Jayme, spent about 15 minutes trying to dissuade him from lodging a complaint.

Although Customs agents are permitted under the U.S. Constitution to search persons entering the country without particularized cause, federal courts agree that a more rigorous standard applies when an agent seeks to perform a strip search.⁶⁷ Although federal appellate courts differ as to the precise standard to be employed, they agree that when a border search goes beyond a routine inspection, some level of suspicion must exist for the search to comply with the Fourth Amendment to the U.S. Constitution which prohibits unreasonable searches and seizures.⁶⁸ Federal courts have thus required that a Customs agent must have either "real"⁶⁹ or "reasonable"⁷⁰ suspicion before she may conduct a strip search.

According to Jayme's account, the Customs agents who detained him had no such "real" or "reasonable" suspicion that would have warranted a strip search of his person. Instead it appears that the agents sought to humiliate and intimidate Jayme.

Agustín Corona: On November 8, 1992, at 2:00 p.m., Agustín Corona, a Mexican national who lives in Tijuana but lawfully works in the United States, was stopped at the San Ysidro checkpoint by Customs officials after drug-detection dogs reacted excitedly to the scent of his car.⁷¹ He was pushed toward the Customs office, told that they suspected him of transporting drugs, and warned that anything he said could be used as evidence against him. In the office, he was strip searched twice but no drugs were found. Agents then pressured him to sign an x-ray consent form, which he did. He was handcuffed and taken to a hospital where he was examined by a doctor and his stomach was x-rayed. No drugs were found. Around 7:00 p.m., he was brought back to the checkpoint, his car was returned, and he was permitted to cross the border. (Corona believes the dogs reacted to the smell of stale beef tacos that were in a bag in the back seat of his car.)

D. Overzealous Enforcement and Abuse of Authority: Violations on High School Campuses

Bowie High School: Recently, a federal court ruled that Border Patrol agents committed a number of abuses over a period of years against students and faculty at Bowie High School in El Paso, Texas including the use of excessive force (beatings, rough physical treatment, and the unnecessary brandishing of a weapon), verbal abuse, and harassment. The ruling marked the culmination of efforts to counter abuses by Border Patrol agents on the Bowie campus.

⁶⁷ The U.S. Supreme Court in *U.S. v. Montoya de Hernandez*, 473, U.S. 531, 541 n.4 (1985) expressly left undecided what level of cause was required to perform a non-routine search on a person entering the United States. See, William E. Ringel, *Searches & Seizures, Arrests and Confessions*, (Clark, Boardman, Callaghan, Deerfield, IL, 1993), §15.2(b)(2).

⁶⁸ *Ibid.*

⁶⁹ See, *U.S. v. DesJardins*, 747 F.2d 499 (9th Cir. 1984), modified on other grounds, 7722 F.2d 578 (9th Cir. 1985) (requiring "real suspicion."); *U.S. v. Flaherty*, 692 F.2d 1258 (9th Cir. 1982) (same).

⁷⁰ See, *U.S. v. Asbury*, 586 F.2d 973 (2d Cir. 1978) (requiring "reasonable suspicion"); *U.S. v. Smith*, 557 F.2d 1206 (5th Cir. 1977), cert. denied, 434 U.S. 1073 (1978) (same).

⁷¹ This account is based on Corona's testimony before the U.S. Civil Rights Commission on April 16, 1993 and a subsequent interview with Americas Watch.

Bowie is a sprawling 2,200 student public high school in El Paso. Because of its proximity to the border, the high school's campus has been the object of extensive Border Patrol vigilance. Until recently, Border Patrol agents freely entered the school grounds to pursue individuals suspected of crossing into the United States illegally.⁷² In so doing, Border Patrol agents abused Bowie High School students, staff, and faculty.

Eventually, seven representative plaintiffs brought a class action suit on behalf of the Bowie community in federal court alleging that their constitutional rights had been denied. The petitioners sought an injunction restraining the Border Patrol from entering campus grounds to detain individuals without some reasonable basis to suspect that they were violating U.S. immigration law. Faculty, staff and students affiliated with the high school came forward to submit affidavits or testify before U.S. District Court Judge Lucius Bunton about previously undocumented abuses.

In December 1992, Judge Bunton ruled that the Border Patrol had violated the civil rights of the plaintiffs and enjoined the agency from doing so in the future. Additionally, Judge Bunton ordered the INS not to stop individuals unless there was a reasonable suspicion, based on articulable facts other than mere Hispanic appearance, that they were violating U.S. immigration laws.⁷³ Among the cases of Border Patrol abuse noted in the court's ruling were the following:

- **Ben Murillo:** Bowie High School football coach Ben Murillo told Americas Watch that on November 9, 1991, he left the Bowie High School parking lot with two students to drive to a football game against another local high school. A few blocks from the school, a Border Patrol vehicle signaled him to pull over, which Murillo did. When he stopped and looked behind him, Murillo saw a Border Patrol agent pointing a gun just inches from his head. Murillo identified himself as a football coach at Bowie High School and told the agent, "I'd appreciate it if you would holster your gun." The agent responded "I'd appreciate it if you would shut your mouth and get out [of the car]." The agent holstered his gun and questioned Murillo.

In addition to the two students in Murillo's car, the incident was also witnessed by two other football coaches who pulled over to see why Murillo had been stopped. The Border Patrol agents interrogated the two students in the car and then let the three leave.

⁷² Rather than position themselves on the south side of the Bowie campus in the strip that separates the high school from Mexico, Border Patrol agents routinely station themselves on the north side of the school. As a result, they routinely entered Bowie's campus in order to detain individuals suspected of crossing illegally. Mark Schneider, an El Paso attorney noted that agents "patrol the Bowie area on the north side of campus—not the south—so that those trying to cross can't see them." [Tina Plaza, "Let's See Some Papers: In El Paso, Looking Latin Is a Crime," *The Progressive*, April 1993, p. 23.] Additionally, "laying back" rather than maintaining a physical presence on the border allows the Border Patrol to detain more immigrants. Americas Watch spoke with several former and current Border Patrol agents who confirmed that this technique is commonly practiced to enhance the agency's arrest figures. As one former Border Patrol agent told Americas Watch, referring to the agency's quota system for evaluating performance, "it's a big numbers game."

⁷³ *Murillo v. Musegades*, EP-CA-319-B, (W.D. Tex. Dec. 1, 1992) (slip. op.) (Granting plaintiffs' petition for preliminary injunction and class certification) [hereinafter *Murillo*]. The court enjoined the INS:

- (1) from stopping and questioning an individual as to his or her right to be or remain in the United States
- (2) unless the Agent has a reasonable suspicion, based on specific articulable facts involving more than the mere appearance of the individual being of Hispanic descent,
- (3) that the individual is either illegally in the United States or is guilty of committing an offense against the Immigration Laws of the United States for which the INS has jurisdiction.

Ibid., p.2.

Although Murillo took no action at the time, several months later he had the opportunity to complain directly to the Border Patrol Chief for the El Paso sector, Dale Musegades. Musegades told Murillo that if the story was true, what happened was inappropriate, and that he would look into it. Murillo never heard from Musegades.

- **Nieden Susie Díaz:** According to Judge Bunton's findings of fact, Nieden Susie Díaz was approached by El Paso Border Patrol agents as she walked home from school, years before the lawsuit was filed. One of the agents demanded to know her citizenship and questioned her. Nieden Susie Díaz answered all of his questions in English. The agent, for no apparent reason, knocked Díaz down to the ground and kicked her about twenty times, causing her physical pain, and bruises.⁷⁴
- **David Rentería:**⁷⁵ On June 3, 1992, Rentería and Juan Carlos Jácquez, two students at Bowie, were walking home from the school when a Border Patrol vehicle pulled up along side them. One agent asked them about their citizenship; both responded that they were U.S. citizens. The agents asked a few other questions which the two young men answered. Rentería answered as he walked. One agent told Rentería, "You better stop [walking] or I'll beat you so bad you won't be able to walk." The agent then asked Rentería for identification and pushed him up against a fence. Rentería responded that he didn't carry identification; that he was invoking his right to remain silent; and that the agent should stop pushing him. The agent responded that Rentería had no right to remain silent because he was not under arrest. In the course of this exchange, the agent pushed Rentería face first against the fence, slapped his back, kicked his legs out to frisk him, and slapped him with one hand while he held Rentería's arm behind his back with the other. The agent called a police officer to the scene, who later told Rentería that there was nothing that could be done about his complaint of physical mistreatment.

About two days later, Rentería (who is visually impaired) was in front of his house with his brother when a Border Patrol vehicle passed by. According to Rentería's brother, the agent in the passenger seat, the same one that had battered Rentería two days earlier, gave Rentería the finger. As he drove off, the agent spat out the window and laughed sarcastically, according to Rentería's brother.

On March 28, 1993, Rentería and Jácquez were once again stopped by Border Patrol agents, apparently without cause, and in apparent violation of the court's temporary injunction. The two young men were waiting at a bus stop when they were stopped by agents who threatened to lock them up when they refused to answer questions. They indicated to an El Paso newspaper that the agents called the men obscene names and angrily derided Bowie High School's principal and those involved in the *Murillo v. Musegades* lawsuit.⁷⁶

- **Mario Tapia:** In the summer of 1991, Mario Tapia and a friend witnessed an El Paso Border Patrol agent stop an unidentified man and beat the man with a baton. When Tapia and his friend tried to

⁷⁴ *Murillo*, p. 10.

⁷⁵ This information is based on the judicial order in *Murillo*, as well as a personal interview of Ben Murillo and David Rentería. Other sources include Roger Tomsho, "Matter of Principle: High School in El Paso Gives the Border Patrol A Civil Rights Lesson," *Wall Street Journal*, February 23, 1993; and Louis Dubose, "Suing the Border Patrol: The Battle at Bowie High," *The Texas Observer*, December 11, 1992.

⁷⁶ Leon Lynn, "Plaintiffs say agents still harass: Ex-Bowie students tell of bus-stop incident," *El Paso Herald Post*, March 29, 1993.

help the man, they were beaten by the agents. The agents struck Tapia at least four times, once in the face, once in the head, and twice near his stomach.⁷⁷

- **Other Abuses:** Several other students suffered abuses including unwarranted arrests, detention and processing at INS facilities for hours despite their legal status in the United States.⁷⁸ The court found the claims of physical mistreatment and verbal abuse of other plaintiffs to be meritorious. It wrote, "Representative Plaintiffs, all United States citizens, have been insulted, humiliated, degraded, and embarrassed each time they were either stopped, questioned, detained, frisked, arrested, searched, and physically and verbally abused by Defendants."⁷⁹

Carl Hayden Community High School:⁸⁰ On March 15, 1993, three students were walking to the high school campus in Phoenix, Arizona from a popular restaurant when they were approached by a plainclothes Border Patrol agent. When the agent yelled to the students to "come here," the students ran onto the campus. The agent chased the students and tackled one of them. According to witnesses, the agent placed his knee into the student's back and held his arm behind his back while he held him face down in a grassy area between two classroom buildings. Witnesses also stated that the agent repeatedly forced the youth's face into the grass. The youth, who was in the country legally, was handcuffed but was not arrested due to the intervention of school officials.

The incident was the latest in a series of Border Patrol incursions onto the campus during which school records were inspected by agents or students were harassed and questioned about their immigration status. Prior to this latest incident, the Border Patrol and school officials had agreed to memoranda of understanding which school officials believed would preclude the inhumane treatment of students. The Border Patrol stated that they had only agreed not to carry out "routine enforcement operations" on school grounds, but had never agreed not to enter the campus.

According to the office of Representative Ed Pastor (D-AZ), this was the 12th time in 13 months that the Border Patrol had attempted to make an arrest on school campuses in west or south Phoenix. In reaction to this incident, Representative Pastor stated, "They are going beyond what I think are reasonable limits in enforcing immigration laws.... The Border Patrol should change its attitude."⁸¹

E. Other Abuses

1. Firing of warning shots

Even though INS firearms policy forbids the firing of warning shots by INS personnel, including the Border Patrol, immigration law enforcement agents in the field routinely ignore the prohibition. As noted in Section II, INS policy states:

Firing a firearm should be done only with the intent of rendering the person at whom the firearm is

⁷⁷ *Murillo*, p. 12.

⁷⁸ *Ibid.*, pp. 6-7 (describing the detention of Héctor Ortiz, María Flores, and two others).

⁷⁹ *Ibid.*, p. 14.

⁸⁰ This account is based on telephone interviews with Kino Flores, Principal of Carl Hayden Community High School and community activists, as well as press articles.

⁸¹ Press statement of Representative Ed Pastor (D-AZ), March 15, 1993.

discharged incapable of continuing the activity that caused the officer to shoot. Therefore, the firing of warning shots is prohibited.⁸²

Despite these regulations, during two recent trials of agents of the Border Patrol, other agents testified that warning shots are fired regularly. For example, in testimony at the trial of former Arizona Border Patrol agent Gary Patrick Callahan, Agent Glenn C. Waltz testified, "It's against Border Patrol policy, but everyone at the station...would fire your gun up in the air. And [smugglers] would drop their loads and run off."⁸³

Testimony during the December 1992 murder trial of Border Patrol Agent Michael Elmer in Tucson, dramatically illustrated Border Patrol agents' total disregard of the prohibition on warning shots. (See, Section II.A.) Agent after agent testified that warning shots are fired nightly in the remote canyons along the border with Mexico.

Border Patrol Agent Frank Arellano, for instance, testified that he was not concerned by shots he heard nearby during a March 1992 incident:

Well, it is like—along the border and stuff like that you hear shots every night, so I don't know if I would say I was alarmed. Like I said, I didn't hear any radio traffic, so, no, I guess I wasn't alarmed....⁸⁴

Agent Salvador García testified during the same trial that, "On any given night, anywhere along the border, you can hear shots being fired."⁸⁵

The use of warning shots by Border Patrol agents is well-known even outside the agency, yet as of December 1992, Border Patrol supervisors had not taken steps to curtail this dangerous practice. For example, during the Elmer trial, the wife of Thomas Watson, Agent Elmer's partner, testified that her husband had told her that "he did fire warning shots, and it is something that I had heard anyway, it was common practice."⁸⁶ She went on to testify that she knew that warning shots were against policy, and added: "It is a very common practice, but it is not a policy, no."⁸⁷ Nonetheless, at a U.S. Civil Rights Commission hearing in April 1993, Border Patrol Chief Ronald Dowdy, the senior Border Patrol official in the Tucson area, testified that supervisors were unaware of the routine use of warning shots by agents before the Elmer trial. He stated that he was now looking into the matter.⁸⁸

Warning shots appear to be an integral part of "drug interdiction operations," which, as was revealed during the Elmer trial, can be both comical and dangerous. Border Patrol agents testified that

⁸² INS Administrative Manual Section 4210, p. 5.

⁸³ McDonnell and Rotella, "When Agents Cross Over." Agent Callahan was convicted on cocaine trafficking charges.

⁸⁴ *Elmer* transcripts, December 3, 1992 (testimony of Frank Arellano), p. 15.

⁸⁵ *Ibid.*, December 10, 1992, (testimony of Salvador García), p. 33. That García was not frightened by the widespread firing of shots suggests that he believed these were not fired at Border Patrol agents, but more likely by them.

⁸⁶ *Ibid.*, December 8, 1992, (testimony of Loreta Diane Watson) p. 70.

⁸⁷ *Ibid.*, p. 87.

⁸⁸ Testimony of Ronald Dowdy before the U.S. Commission on Civil Rights Commission, April 16, 1993.

"they don't train us at all in drug interdiction."⁸⁹ Watson testified that the preferred method of interdiction is to sneak up on "mules" or drug couriers, yell at them, jump up and down and fire into the air or at the mules. The desired result is for the mules to drop their "loads," or the drugs that they are allegedly transporting into the United States, and then run back into Mexico.⁹⁰

An Arizona Army National Guard communications specialist who was working with Agent Elmer during a March 18, 1992, drug interdiction operation testified:

I do remember Mike Elmer saying that they were shooting between their legs and at their feet to get them to drop whatever they were carrying and they would run.⁹¹

2. Failure to Report Weapons Discharges

As noted in Section II.A., agents do not follow firearms reporting guidelines, which state:

Any employee who discharges a firearm, or is involved in or observes a reportable shooting incident, shall verbally notify the first-line supervisor as soon as time and circumstances permit, but before the officer goes off duty....Employees who discharge a firearm, or are involved in a shooting incident, shall be required to provide a written report of the incident within sixteen (16) hours of the incident. Any other employee who observes a shooting incident, but does not discharge a firearm or is not directly involved in a shooting incident, shall be required to provide a written report of the incident before the termination of the shift.⁹²

Testimony showed that even though several agents witnessed or became aware of two serious shooting incidents near Nogales, Arizona—the March 18, 1992 firing on a group of 30 undocumented immigrants and the June 12, 1992 shooting at three men—only one agent came forward to report that shots had been fired. Further, agents testified that they were aware that it was INS policy to report any shootings during their shifts, yet stated that shootings are so commonplace that no one bothers to report them. One agent stated that, "if you report that [shots were fired] you will be in the office every day for at least two hours or three hours. Like I said, you hear shots every night."⁹³

At the Elmer trial, Agent Watson also testified that, when Border Patrol agents check in their weapons at the end of their shifts, the ammunition clips usually are not checked. Agent Watson went on to testify that "everyone at the station always had a couple of extra rounds" so they could replace any bullets fired while on duty without having to report that shots were fired. Watson went on to testify that, "...you keep them [extra bullets] in your lockers [sic] so you can fill them up in case you shoot at a

⁸⁹ *Elmer* transcripts, December 9, 1992, (testimony of Thomas Watson), p. 86.

⁹⁰ As Border Patrol agent Thomas Watson testified:
Well, we [Agent Elmer and Agent Watson] have talked about firing warning shots. It is the easiest way to do it and the safest way of jumping a load....It is easier and it is kind of the way we did down there, is jump up and yell Border Patrol and shoot up in the air, shoot up in the air, and they drop the bundles and run.
Elmer transcripts, December 9, 1992, (testimony of Thomas Watson), p. 21.

⁹¹ *Elmer* transcripts, December 3, 1992, (testimony of Andrew Priesner), p. 17.

⁹² INS Administrative Manual Section 4210, pp. 9-10.

⁹³ *Elmer* transcripts, December 3, 1992, (testimony of Frank Arellano) p. 25.

rabbit or warning shots."⁹⁴

3. Immediate Deportation

Americas Watch has received reports that immigration law enforcement officials have deported non-citizen minors without allowing them to notify their parents (as in one case described below) or without allowing them to complete medical treatment or collect their belongings (as in the second case described below). The insensitivity displayed in these cases is symptomatic of the disdain with which INS agents often treat detainees.

Teenagers deported without parental notification: In November 1992, two teenagers were arrested by the INS at their high school in Omaha, Nebraska, and subsequently deported to Mexico.⁹⁵ According to reports, the parents of the two youths were not notified by the INS that their children had been deported.

The two teenagers—Ambrosio López, age 17, and Augustín Antúñez, age 15—were in class at Omaha's South High School on November 6, 1992, when they were summoned to the principal's office. INS agents, who had presented an arrest warrant for the two teenagers, took custody of the youths without calling their parents. The father of one of the youths only learned of the deportation when his son called him from Nogales. The mother of the other youth heard about her son's arrest from friends a day after it took place.

López and Antúñez were detained by the INS for three days before they were taken across the border to Nogales, and left there without food, extra clothes, or money. The father of one of the youths complained that his son, "was sick with gastritis, with no money, no relatives, and in a strange town."⁹⁶

Following an outcry from the community and elected officials, the youths were returned to their parents, seven weeks after their arrest. Although the parents of the two teenagers have gained legal residence in the United States, the youths have been denied residency and can still be deported.

Federico Pérez Cruz: Pérez, a 25-year-old Mexican citizen from Cuernavaca, Mexico, told Americas Watch that in late October 1992, he was sleeping in his hospital bed in Las Vegas, Nevada, recuperating from a leg injury, when a female Border Patrol agent entered his hospital room and told him that he was being deported immediately.⁹⁷ He was not allowed to pack his belongings. When he was removed from the hospital, Pérez had a metal pin in his leg to help it heal. He told Americas Watch that he did not know if the pin should remain in his leg. When the agents placed him in the Border Patrol van, Pérez reports that the agents mishandled his injured leg, thus causing him severe pain.

⁹⁴ *Ibid.*, December 9, 1992, (testimony of Thomas Watson), p. 61.

⁹⁵ Bruce E. Johansen, "Kidnapped by 'La Migra,'" *The Progressive*, April 1993, p. 21.

⁹⁶ *Ibid.*

⁹⁷ This account is based on a March 20 interview with Federico Pérez Cruz in Tijuana, Baja California, Mexico.

IV. FAILURE OF THE EXISTING COMPLAINT AND REVIEW PROCEDURES

Americas Watch believes that the procedures currently in place for the receipt and investigation of complaints of alleged abuses by INS and Customs Agents are inadequate. These procedures, as well as obstructive actions of agents guarantee that complaints are underreported. In the case of the INS, even if a complaint is filed, the investigations mechanisms utilized are plagued by overlapping jurisdiction and broad gaps that result in inadequate investigations and ultimately impunity for abusive agents. Both systems are further undermined by near total secrecy and, in the case of the INS, excessive discretion in the disciplinary process that fosters cronyism in the application of sanctions. Each of these factors is considered below.

A. Ignorance and Fear Lead to Underreporting of Abuse

Ignorance about the proper procedures for filing a complaint alleging abuse is widespread throughout the border region. According to a recent study of the relationship between the community and immigration law enforcement authorities in the lower Rio Grande Valley, "the greatest obstacle to filing complaints about alleged mistreatment is the absence of information about the existence of [a] complaint procedure."⁹⁸

The Rio Grande Valley study, directed by Robert Koulish of the University of Wisconsin, polled residents of the lower Rio Grande Valley on their attitudes and interactions with immigration law enforcement authorities in the region.⁹⁹ Of 250 respondents, Koulish found that only 32, or 12.8%, believed that it was even possible to file a complaint. Koulish also found that of the 72 people who actually suffered abuses, only 12 victims registered any sort of complaint.

One example of this phenomenon was provided by 30-year-old Ramón Rivera, a Ciudad Juárez resident who told Americas Watch how he had been beaten badly by Border Patrol agents four years earlier while in a detention facility. Rivera only decided to report the beating after seeing a Mexican television program which gave viewers information about how to report cases of abuse in the El Paso-Juárez area to local advocacy groups. Before that, he had no idea as to how or where he could report such incidents.

Rivera's experience was typical of many victims with whom we spoke throughout the border region. In fact, after dozens of interviews with victims, witnesses, human rights investigators, attorneys, and immigration law enforcement authorities, Americas Watch was not informed of a single case in which a victim was assisted by immigration law enforcement agents when attempting to file an abuse complaint.

Fear of being deported and embarrassment about being a victim of police abuse also contribute to lack of reporting of abuses. Shortly after faculty at Bowie High School began to gather evidence for a possible lawsuit against the Border Patrol:

⁹⁸ Robert Koulish, Director, Border Interaction Project, "Pilot Study of the Relationship between the Lower Rio Grande Valley Community and Immigration Authorities," (Draft, May 1993).

⁹⁹ Koulish's pilot study was performed by students at the University of Texas, Pan American, who interviewed acquaintances and residents of their communities. The study provides insights into the experience of a community that interacts on a daily basis with immigration law enforcement authorities.

Bowie students began to come forward to offer testimonials of their own. Stories of incidents that occurred two months, six months, one year, two years ago, stories of verbal abuse, threats, sexual harassment, several charges of physical abuse....¹⁰⁰

As Robert Tomsho wrote in the *Wall Street Journal*, even U.S. citizens fail to complain because they:

...are humiliated to have been mistaken for a criminal or something other than a U.S. citizen. "You wouldn't even tell your friends about it," sighs Bowie High School secretary Grace Hernández.¹⁰¹

Indeed, as the case of Nieden Susie Díaz shows, you might not even tell your mother. After the lawsuit at Bowie High had gathered momentum, Díaz came forward with her story: a few years earlier, she had been stopped and beaten by Border Patrol agents who kicked her about twenty times, even after she had fallen to the ground. (*See*, Section III.D.) Despite being bruised and in pain afterwards, Díaz told no one, including her mother, about the incident until the Bowie High School lawsuit.

As we noted in *Brutality Unchecked*, the undocumented, because of their unprotected status, unfamiliarity with English, U.S. law and customs, and fear of deportation or imprisonment, are even less likely to complain formally. Unfortunately, as we detail below, immigration law enforcement authorities all too often use this vulnerability to guarantee impunity for their abuses.

B. Problems with the INS Complaint Procedures

For some time, the INS has proudly boasted a low complaints-to-arrest ratio.¹⁰² Presumably, this low ratio should be taken as an indication that INS agents rarely commit abuses. Instead, Americas Watch believes that the figure is an indictment of the existing complaint process, and a result of other mechanisms used by INS agents to dissuade victims from complaining. Americas Watch notes several fundamental problems with the complaint procedures, including:

- the lack of a complaint form;
- the lack of a comprehensive and systematic procedure for informing the public of its right to complain;
- a low ratio of investigators to total employees;
- the lack of an adequate appeals process; and
- incomplete complaint statistics and the failure to publish statistics on a regular basis.¹⁰³

¹⁰⁰ Louis Dubose, "Suing the Border Patrol: The Battle at Bowie High School," *The Texas Observer*, Dec. 11, 1992, p. 5.

¹⁰¹ Robert Tomsho, "Matter of Principle: High School in El Paso Gives the Border Patrol A Civil-Rights Lesson," *Wall Street Journal*, February 23, 1993.

¹⁰² Since 1989, the Immigration and Naturalization Service has boasted that there is only one registered complaint for every 17,000 arrests.

¹⁰³ Americas Watch, *Brutality Unchecked*, p. 3 (*citing* U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration*, 1980); Immigration Law Enforcement Monitoring Project, American Friends Service Committee, "Preliminary Comments on § 503(a)(5)(B) of the Immigration Act of 1990," 1991.

Another contributing factor in the underreporting of complaints is the belief on the part of INS officials that they are not responsible for receiving complaints alleging abuse by INS personnel. Border Patrol Chief for the San Diego Sector Gustavo de la Viña typified this attitude at a recent U.S. Commission on Civil Rights hearing, when he stated his belief that the complaint procedures were adequate since every detainee is handed over to a Mexican official to whom they can complain.

In addition to these factors, Americas Watch has found that complaints against INS agents are underreported for other reasons, including the use of tactics to dissuade victims from complaining, dissuasion tactics directed at other agents, and the threat of criminal counter-charges. Each of these factors is considered below.

1. Agents dissuade victims from filing complaints

INS agents use a variety of methods to dissuade witnesses and victims from reporting violations, ranging from misinforming them about the complaint procedures to threatening to bring counter-charges against them.

The reluctance of agents to assist witnesses and victims of abuse in their attempts to file complaints, in combination with the intentional blocking of such complaints, assures that the number of complaints actually received does not reflect the actual number of abuses. As a recent investigative report by the *El Paso Times* concluded, "the Immigration and Naturalization Service, the Border Patrol and U.S. Customs Service can tout low abuse rates because they regularly brush off attempts to report misconduct."¹⁰⁴

The *El Paso Times* study showed that half of the agents who were approached by complainants ridiculed them, gave them incomplete information, told them to report complaints to the Mexican Consulate, or could not communicate in Spanish. In one particularly outrageous case, an INS inspector, baffled by a man who wanted to report a case of verbal abuse, eventually sent him to a fruit inspector with the Department of Agriculture to lodge a complaint.¹⁰⁵

Americas Watch interviewed victims of abuse whose attempts to report violations were thwarted. For example, Juan Antonio Velásquez, who allegedly was beaten by a Border Patrol agent in El Paso, Texas, in February 1992, attempted to report the abuse several times, to no avail. (See, Section III.A.). On each occasion he was told that he would be contacted within days, but never was. Further, he was never informed that he could contact the Department of Justice's Office of the Inspector General or the FBI directly.

¹⁰⁴ Paul Salopek, "Tapes show flawed complaint process," *El Paso Times*, December 7, 1992.

¹⁰⁵ Paul Salopek, "La Migra: The Border Patrol's Wall of Silence," *The Texas Observer*, March 12, 1993, p. 10. Salopek used the information from the *El Paso Times* survey in this article.

2. Agents dissuade fellow agents from reporting abuses

In addition to dissuading witnesses and victims of abuse from filing complaints, INS agents also dissuade fellow agents from reporting abuses and violations. As described elsewhere in this report, the Elmer trial in Tucson revealed that agents adhered to a strict code of silence and rarely reported human rights abuses or infractions of INS rules. (See, Section III.E.) Agent Thomas Watson, Elmer's partner, has stated that he believes that he was fired for reporting his partner's role in the Miranda Valenzuela shooting, not for breaking agency rules, as the INS has stated. A recent *Los Angeles Times* article reported that FBI agents had complained in a letter that Border Patrol agents in the Tucson area were being "dissuaded" by fellow agents from reporting abuses.¹⁰⁶

Last year, a Border Patrol agent stationed at Imperial Beach, California, testified against fellow agent Frank Jeschke at the latter's trial on assault charges.¹⁰⁷ After she testified that Jeschke had a reputation for abusive behavior, she began to receive threats in her mail. At Jeschke's hearing she had testified, "There is a code that we are not supposed to tell on other agents."¹⁰⁸

3. Counter-charges

One of the most effective methods employed by INS agents to prevent abuses from being reported is the filing of intimidating criminal misdemeanor or felony charges against victims of abuse. INS agents are aware that most abused migrants will not defend themselves against trumped up charges and instead will accept voluntary return to Mexico or plea bargains, rather than pursue complaints against abusive agents.

In a recent article in the *Los Angeles Times*, a retired Border Patrol supervisor from San Diego explained:

The agents either...frighten the person into not making a complaint against them or they come up with some kind of a counter-charge: 'Yeah, I thumped up on the person, but he jumped me and we were fighting....'¹⁰⁹

Recent examples of the filing of counter-charges include:

José Ramírez Montaña: The American Friends Service Committee reports that on February 6, 1993, José Ramírez Montaña was choked, kicked, and beaten by a Border Patrol agent near the San Ysidro/Tijuana border crossing. The Border Patrol agent became angry with Ramírez when he tried to protect himself during the attack, and dragged him to another location and beat him again.

After the beating, Ramírez was taken to Harbor Hospital in San Diego for treatment of his injuries, and then to the Metropolitan Correctional Center. When Ramírez stated that he was going to file a complaint to protest the beating, he was charged with assaulting a federal officer. Even though the agent involved apparently was not injured, Ramírez received a three-month sentence. Once he completes his sentence he likely will be deported by a judge and not allowed to re-enter the United

¹⁰⁶ McDonnell and Rotella, "When Agents Cross Over."

¹⁰⁷ Rotella and McDonnell, "A Seemingly Futile Job."

¹⁰⁸ *Ibid.*

¹⁰⁹ McDonnell and Rotella, "When Agents Cross Over."

States.

Evangelina Alcocer: The case of Evangelina Alcocer is another instance of the use of counter-charges to dissuade complaints (see Section III.A.). Alcocer allegedly witnessed her mother being beaten by Border Patrol Agent Mario Bellamy on June 30, 1992. After Bellamy allegedly had taken the keys from Alcocer's automobile and tossed them to the ground for her to retrieve, he pointed his gun in her neck. When she stood up with her keys, Alcocer sprayed mace in Bellamy's face. As a result of the incident, Alcocer was prosecuted for assaulting a federal officer. Alcocer's mother, Margarita Rodríguez, and her sister, Socorro Rodríguez de Vásquez told Americas Watch that although Alcocer believed herself to be in the right, she feared that she might lose her children and her residency if convicted and therefore agreed to a plea arrangement.

Manuel Quezada: Last year, the final chapter was written in a widely-publicized case involving the alleged use of counter-charges to harass a victim of Border Patrol abuse. On January 14, 1992, 15-year-old Manuel Quezada de la Torre pleaded guilty to illegally entering the United States. Federal prosecutors dropped charges of assault that had originally been filed against the youngster.¹¹⁰

Quezada, a slight 5-foot-1, 98-pound teenager, and Border Patrol Agent Farrell F. Fisher give vastly different versions of the October 21, 1991 scuffle that resulted in Quezada's prosecution. According to court documents filed in the case, the Border Patrol alleged that Quezada punched Fisher in the face, bloodying his lip. In response, Fisher pushed the teenager, who fell back against a 6-foot wall and then onto the ground, splitting open his head.¹¹¹

Quezada claims that he hit no one. While scrambling over a wall with a guide, he encountered Fisher. He and the guide jumped to the ground. In the process, Quezada contends the guide accidentally kicked Fisher in the mouth. The guide fled, leaving Quezada alone with the much larger Fisher. Quezada indicated that Fisher struck him with the flashlight on his head. Fisher's cut required two stitches; Quezada's wound was closed with three staples.¹¹²

Miguel Escobar, a spokesman for the Mexican Consulate summarized the Mexican government's version of the incident:

We never believed that a 15-year-old boy, who looks like 12—very slender, very small—did actually attack the officers of the Border Patrol. You don't try to attack someone as big and as well conditioned as these guys, who carry pistols.¹¹³

4. Fear of extended detention as material witness

Another disincentive for an undocumented immigrant who wishes to bring a complaint or serve as a witness, is the possibility that he or she might be detained as a material witness in jail or at an INS facility. In cases where the FBI or the OIG investigates an allegation of criminal wrongdoing, an undocumented immigrant who cooperates with that investigation may be detained for several months.

¹¹⁰ Alan Abrahamson, "Border Assault Case Against Boy Dropped," *Los Angeles Times*, January 15, 1992.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

C. Failure of the Existing INS System to Process Complaints Adequately

1. Overview

The internal mechanisms for examining complaints against INS agents are designed to guarantee thoroughness by having cases of abuse investigated or overseen at several levels. In practice, however, the tiered system results in jurisdictional overlaps or gaps, often allowing agents to escape discipline for their abusive conduct. The diffusion of responsibility for review allows complaints to float through the system without anyone ensuring that agents responsible for abuse receive any sanction. From our many calls to the Office of the Inspector General and the Criminal Section of the Civil Rights Division of the Department of Justice, and our review of the many cases we examined firsthand, we have been able to piece together the following sketch of how the INS review system works. This overview is intended to point out flaws in the existing structure that allow abusive agents to continue unchecked.

Prior to 1989, complaints of INS misconduct were handled within the agency by its Office of Professional Responsibility (OPR). In April 1989, Congress established the Office of the Inspector General (OIG), within the Department of Justice, but outside the INS, to strengthen the internal audit and investigative activities of the department, including the INS. Many INS personnel who formerly worked for OPR became investigators with the OIG, as have many other former INS employees.¹¹⁴ Thus, ex-INS personnel continue to review and investigate complaints of their former INS colleagues' misconduct.¹¹⁵

More worrisome is the fact that the vast majority of abuse cases are investigated by INS and Border Patrol managers themselves. According to the OIG, of the cases that the OIG deems worthy of investigation, nine out of ten are referred back to the INS and Border Patrol for investigation.¹¹⁶ This tendency to send cases to the agency for investigation, combined with the fact that former INS and Border Patrol personnel staff make up roughly 40% of the investigations staff of the OIG, raises serious concerns about the independence of investigators.

A complaint may reach the OIG by various means. First, the OIG operates a hotline to receive complaints. Unfortunately, ignorance about the existence of the hotline is widespread. As the previous discussion of dissuasion by INS agents shows, individuals with complaints are rarely directed to the OIG's hotline number, even if they express an interest in complaining. No comprehensive efforts have been made by the INS to inform the public of its right to complain through the hotline.

Even if a complainant learns of the existence of the OIG hotline, there is no guarantee that she will be successful in lodging a complaint. For example, when Americas Watch staff called the OIG hotline one Saturday, we received a recorded message, in English only, indicating that the hotline's operation hours are Monday through Friday, 8:30 a.m. to 5 p.m. That recording also gave the number of a toll

¹¹⁴ According to the OIG, 55 of the 135 current OIG investigators are former INS employees.

¹¹⁵ OPR continues to exist within the INS, although OIG staff responding to our inquiries could not describe what the OPR's duties are. U.S Representative Jim Bates concluded in 1990 that "overlapping jurisdiction [of the OPR and OIG] is used as the excuse for inaction." Louise Palmer, "Agents of Abuse: Who Is Monitoring the Border Patrol," *Texas Observer*, December 21, 1990.

¹¹⁶ This figure was given by an OIG supervisor during a May 4, 1993 telephone interview with Americas Watch. In fact, the Office of the Inspector General stated in a May 6, 1993, letter to Representative Don Edwards (D-CA) that between April 1989 and April 1993, the OIG investigated only 22 of the 635 civil rights complaints involving Border Patrol agents that it reportedly received—less than four percent of the total.

call, 24-hour fax line. Few, if any, undocumented immigrants have access to fax machines, even assuming they are able to understand recorded messages in English.

Americas Watch staff also called the OIG hotline at the Department of Justice three times during operating hours and asked, in Spanish, how to make a complaint. Two times the person who answered could not communicate in Spanish, and explained in English that she could not speak Spanish. A third time, the same person put the caller on hold for several minutes. When a man who could speak some basic Spanish took the call, he was asked how to make a complaint against a Customs agent. He gave the caller the Department of Treasury's OIG number. This number had a recording on in the middle of the day saying they would be closed until later in the afternoon. Even if the hotline had been staffed at the time of our call, the Department of Treasury's OIG has told Americas Watch that it does not handle civil rights complaints. If an employee of the OIG at the Department of Justice does not know which types of complaints the OIG at the Department of Treasury handles, it is unreasonable to expect a complainant to understand the correct procedure.

Another method by which the OIG receives complaints is from INS employees. When an INS employee or a victim seeks to complain, her complaint is ordinarily directed to a field office supervisor. The local supervisor, in turn, should pass the complaint on to OIG. There is no way to know with any certainty what percentage of complaints are actually forwarded to the OIG, because complainants are not notified about the status of the investigation into their complaint—or even whether an investigation has been initiated at all.

Complaints reaching the OIG are directed to different divisions, depending on their nature. If the complaint involves an allegation of an offense which is prosecutable under the federal criminal civil rights statutes (18 U.S.C. § 241, and 18 U.S.C. § 242), it will be referred to the Criminal Section of the Civil Rights Division of the Department of Justice. OIG personnel contend that if there is any doubt about whether a case is prosecutable, it is referred to the Civil Rights Division. If not, the case remains with the OIG.

2. The Criminal Section of the Civil Rights Division

The Criminal Section of the Civil Rights Division is responsible for determining whether to investigate and then prosecute complaints of abuse by INS and Customs agents. In the initial stage of review, if a complaint alleges facts that constitute a non-trivial, criminal civil rights violation (complaints at this stage are accepted at face value), then the Criminal Section will order the case investigated. If not, complaints that allege misconduct by INS employees are returned to the OIG.

According to the Criminal Section, because the INS is an entity within the Department of Justice, and because of concerns about the transient nature of victims or witnesses of INS abuse, determinations of whether or not to investigate a given complaint are ordinarily made by the next business day.

Once a case is determined to involve an allegation of prosecutable violation(s) of the civil rights law, the Criminal Section routinely forwards it to the FBI for investigation. FBI investigations are often lengthy. While they are ongoing, though, the agent may remain on the force.¹¹⁷ The determination of whether an accused agent remains on active duty during an investigation is left to the agent's supervisor, even when the alleged violation is a serious criminal abuse such as rape as in the case of ex-Border Patrol Agent Luis Santiago Esteves (*See*, Section II.B.).

¹¹⁷ And, as mentioned above, witnesses or victims who cooperate with the investigation may remain in jail or in an INS detention facility.

When the FBI completes its investigation, it forwards a copy of its investigative report to the Criminal Section of the Civil Rights Division and the local U.S. Attorney's Office. At this point, the Criminal Section determines whether to proceed with a grand jury indictment. This determination, however, is based on vastly different criteria than the decision to investigate. In order to bring a case to the grand jury, the Criminal Section must be convinced that there is sufficient evidence to prove *beyond a reasonable doubt* that the agent involved violated the complainant's civil rights, and that she or he did so *intentionally*. According to the Criminal Section, this standard is quite difficult to meet. As a result, few cases are brought to the grand jury.

We sought data from the Criminal Section regarding the percentage of cases referred to them which are investigated and brought to the grand jury. They suggested that we file a Freedom of Information Act request.¹¹⁸ However, *El Paso Times* reporter Paul Salopek received from the Department of Justice figures summarizing these percentages for the past several years. According to the Department of Justice, the number of INS cases referred to the Civil Rights Division, the number investigated, and the number brought to the grand jury in fiscal years 1989, 1990, and 1991 were as follows:

Fiscal Year	Referrals	Investigations	To Grand Jury
1989	178	54	4
1990	213	61	2
1991	280	84	2

Source: U.S. Department of Justice¹¹⁹

The remarkably small number of cases brought to the grand jury is striking. Even taking into account the high standard of proof demanded in federal criminal prosecutions, the number of cases brought to prosecution seems to be unjustifiably low.

The scarcity of cases brought to the grand jury may be a result of a lack of thoroughness on the part of the Civil Rights Division in determining whether to prosecute. Commenting on this, one former Border Patrol Union representative told us that he's seen cases where "six to nine months of investigation are turned down [by the Civil Rights Division] in six to nine hours." In this regard, the case of Margarita Rodríguez and Socorro Rodríguez de Vásquez illustrates the way in which complaints of civil rights violations may not always thoroughly be considered. Despite the existence of numerous witnesses who saw Agent Bellamy repeatedly batter Rodríguez while she held her small son, the prior violent history of Agent Bellamy, the outrage of the Mexican Consulate in El Paso, and significant media coverage in the region, the Civil Rights Division opted not to prosecute him. When the agency informed the complainants that the matter did not "constitute a prosecutable violation of the federal criminal civil rights statutes,"¹²⁰ it referred to Ms. Socorro Rodríguez de Vásquez as "Vasquez De Rodriguez," and twice referred to her as *Mr. Rodriguez*.¹²¹ These errors contradict the form letter's

¹¹⁸ As described below in Section IV.4., this is a time-consuming exercise not likely to produce desired results.

¹¹⁹ Paul Salopek, "La Migra: The Border Patrol's Wall of Silence," *The Texas Observer*, March 12, 1993, p. 7.

¹²⁰ Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division and Linda K. Davis, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice to Ms. Margarita Rodriguez and Mr. Socorro Vasquez De Rodriguez, December 7, 1992.

¹²¹ Socorro is a common name for women, though not men, in Spanish. In addition, the preposition "de" when it precedes a surname, indicates that a woman is married to a man with that surname. Thus, the last name "Rodríguez de Vásquez" could only refer to a married woman. Detailed evaluation of this case would have demonstrated that the only man involved in the incident was Agent Mario Bellamy.

assertion that the agency had undertaken a "careful review"¹²² of the FBI's investigative report.

3. INS and OIG Investigations

A decision by the Civil Rights Division that a case will not be brought to a grand jury is based on a determination, at least in theory, that there is insufficient evidence to prove that the agent involved *intentionally* violated the victim's civil rights *beyond a reasonable doubt*. Such a determination should not influence the subsequent review performed by the OIG. In practice, though, the Civil Rights Division's decision not to prosecute is often treated as an official exoneration. One OIG supervisor told Americas Watch, that the OIG has no reason to question the Civil Rights Division. The OIG investigation that follows is often perfunctory and fails to result in disciplinary action. Thus, the two-tiered system of review (in which complaints are first sent to the Criminal Section of the Civil Rights Division and then forwarded to the OIG) does not guarantee additional scrutiny. Instead, the process often acts to limit the basis for agent discipline to intentional acts which can be proven beyond a reasonable doubt (the standards used by the Civil Rights Division).

Once a complaint is returned from the Civil Rights Division, or if it has never been forwarded there, the OIG must determine what type of review the complaint will be accorded.¹²³ With each case OIG processes, it decides whether to perform the investigation using its own investigators or to assign the case to INS field offices for investigation by INS personnel. (*See*, Section IV.B.1.) The vast majority of cases fall into this second group, and are therefore investigated by non-OIG personnel. These non-OIG investigators who perform the majority of investigations are INS personnel, often from the same division as the suspected agent. Thus, Border Patrol agents often investigate other Border Patrol agents.¹²⁴

Border Patrol agents told Americas Watch that there is broad discretion involved in this investigation process. Once the OIG decides to allow non-OIG personnel to review a case, a great deal of subjectivity is injected into the process. Agents told Americas Watch that field supervisors responsible for investigations often check with an agent's immediate supervisor to find out how diligently to pursue an investigation. As one former agent told us, if the agent investigated is liked by the supervisor, "the investigation usually won't find anything." When the report is complete, it is returned to the OIG which reviews the submission for procedural completeness, though not for substance.

According to reports, the OIG received 463 allegations against agents in fiscal year 1992.¹²⁵ Inspectors opened formal investigations in 30 cases of alleged abuses ranging from beatings to bribery. According to the *Los Angeles Times*, nine of these 30 investigations remained under investigation as of

¹²² Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division and Linda K. Davis, Chief, Criminal Section, Civil Rights Division, US. Department of Justice to Ms. Margarita Rodriguez and Mr. Socorro Vasquez De Rodriguez, December 7, 1992.

¹²³ In fact, the majority of cases investigated by the OIG's investigations division are not claims of human rights abuse but other forms of misconduct such as bribery or theft.

¹²⁴ Even when a complaint is assigned to an OIG or INS investigator, if during the investigation a violation of the federal criminal civil rights statutes is discovered, the case should be returned to the Civil Rights Division of the Department of Justice.

¹²⁵ McDonnell and Sebastian, "When Agents Cross Over."

April 1993. Most of the remaining cases were determined to be unsubstantiated by investigators. Although the INS' refusal to disclose information about internal investigations makes it difficult to determine whether agents are ever sanctioned, there are indications that agents responsible for serious violations have not been subjected to internal discipline by the INS.

4. Secrecy

Internal review of INS agents accused of committing abuses is shrouded in secrecy, with the public allowed only occasional glimpses of the procedures used to identify and punish abusive agents. As described throughout this report, those rare opportunities display a review system that is woefully inadequate. Because of its often damning nature, and due to the camaraderie within the ranks of the INS and its sub-agency the Border Patrol, information about internal review of agents is fiercely guarded.

The *El Paso Times* revealed how secretive the INS and OIG can be about their internal review processes. The newspaper sent 29 pages of letters, made telephone calls for months, and had former Senator Lloyd Bentsen (D-TX) intercede to expedite its request for information about the internal review process.¹²⁶ After the Department of Justice failed to respond to requests for information, the newspaper filed Freedom of Information Act (FOIA) requests. The reporter who filed FOIA requests about 22 well-documented allegations of abuse against El Paso-based Border Patrol agents was told by a source within the INS that, "that's exactly what they want you to do....That way they can sit on (the requests) for years."¹²⁷ In the end, the newspaper reported that—nine months after the original requests—they had received no information about review procedures. Of the 22 cases, the Department of Justice reported that it had no record of 14, and that it could not divulge the names of the agents involved, whether or not investigations were continuing, or the result of those investigations. "I want you to know, we're not trying to stonewall or anything," a spokeswoman for the Department of Justice told the reporter.

Information about an investigation into an agent's alleged misconduct is not disclosed to the person who made the complaint either. Without exception, victims of abuse interviewed by Americas Watch stated that they had not been adequately informed by the INS about the status of investigations into abuses they had reported. None had any idea whether the agents they had accused of misconduct had been investigated or disciplined in any way.

When victims file lawsuits against INS agents, the agency frequently prefers to avoid the spotlight of a civil trial and instead often settles claims of abuse out of court. In one case, the U.S. government paid 15-year-old Eduardo Zamores, shot by Calexico, California Border Patrol Agent William Cypher in 1990, \$60,000.¹²⁸ In other instances, when cases are settled out of court, the agreement often mandates that the name of the accused agent be kept secret. For example, in March 1992, the victim of a September 1990 sexual assault allegedly committed by a Border Patrol agent in the San Diego area was awarded a "significant" sum in an out-of-court settlement with the INS; the name of the agent involved in the incident was not released as part of the agreement.¹²⁹ In our view, these examples suggest that the

¹²⁶ Paul Salopek, "Government says little -- if it answers at all," *El Paso Times*, December 6, 1992.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ Americas Watch interview with Marco López, attorney for the victim, March 18, 1993.

government is ill-served by an internal review system that is dysfunctional, and has to resort to paying to keep agents' identities and actions secret.

5. Failure to discipline agents

As demonstrated by cases throughout this report, the INS consistently fails to discipline agents involved in human rights abuses. When disciplinary actions are taken against abusive agents, they are applied inconsistently, with many agents avoiding sanctions altogether. Regrettably, the inadequacies of internal review and disciplinary procedures only become public when an agent commits an abuse serious enough to attract the public's attention. In these instances, it is often revealed that the agent had a history of abusive behavior but was never punished, dismissed or criminally prosecuted.

As described above, if an agent is found guilty of misconduct of a non-criminal nature, it is up to the agent's supervisor to choose what disciplinary action should be taken against him. Supervisors may exercise discretion in choosing how severely to punish an agent found guilty of misconduct. Inspector General Richard J. Hankinson testified on March 30, 1993 that, "We do not have very useful data at this point on how the INS disciplines its employees in response to our investigations or those of others."¹³⁰ Inspector General Hankinson added that, "...INS' treatment of misconduct is spotty. Whether action is taken, and the severity of the punishment, if any, seems to be uneven and sometimes happenstance."¹³¹

The disciplinary sanctions imposed can be grossly disproportionate to abuses committed. One particularly dramatic example is the case of a Border Patrol agent formerly stationed in Texas who was involved in two separate high-speed chases during the 1980's that left a total of four Mexican citizens dead, 16 injured, and resulted in court-ordered compensation payments of almost \$300,000.¹³² The agent was never disciplined; after one of the incidents, his annual performance was rated as superior. He remains on the force.¹³³

As we noted in our last report, in 1991, U.S. District Judge Harry Lee Hudspeth found that two agents wrongfully caused the drowning death of Armando Valenzuela in a 1987 incident. As a result, Judge Hudspeth awarded Valenzuela's survivors \$210,000.¹³⁴ Despite this, it was recently disclosed that neither of the agents was ever disciplined.¹³⁵ Border Patrol Agent William Cypher, whose 1990 shooting of 15-year-old Eduardo Zamores cost the government \$60,000, similarly escaped reprisal.

¹³⁰ Statement of Richard J. Hankinson, Inspector General, Department of Justice, before the Subcommittee on Information, Justice, Transportation and Agriculture of the Committee on Government Operations, U.S. House of Representatives, March 30, 1993, p. 22.

¹³¹ Testimony of Inspector General Hankinson, March 30, 1993, p. 23.

¹³² Sebastian Rotella and Patrick J. McDonnell, "Allegations Fuel Calls for Reform in Border Patrol," *Los Angeles Times*, April 26, 1993.

¹³³ *Ibid.*

¹³⁴ Americas Watch, *Brutality Unchecked*, p. 22, citing "Government Ordered to Pay \$210,000 to Kin of Man Drowned in Rio Grande," *Houston Chronicle*, February 6, 1991.

¹³⁵ Rotella and McDonnell, "A Seemingly Futile Job."

Cypher's supervisor told the *Los Angeles Times* that the agent was transferred to Texas but never disciplined.¹³⁶

Many individuals familiar with disciplinary actions believe that the punishment meted out to a particular agent depends more on that agent's relationship with his or her supervisor than with the seriousness of the abuse he or she has committed. A former Border Patrol agent told Americas Watch, "If you punch somebody's face in and you're [on good terms with the supervisor] you're okay." A seven-year veteran of the Border Patrol stated, "In about 70 percent of the offense categories, the punishments can range from verbal reprimand to dismissal. And there's certainly cronyism in how it's handled."¹³⁷

One result of this inconsistent and inadequate application of disciplinary sanctions has been the development of the attitude among many agents in the field that they can get away with anything as long as they have a good relationship with their supervisor. This attitude is evident throughout this report. For example:

- Agent Michael Elmer made no attempt to clean or hide the weapon that he used to shoot and kill an unarmed Mexican. It is apparent that he did not believe any investigation into his actions would take place, even though there were witnesses. (*See*, Section II.A.)
- Juan Antonio Velásquez told the Border Patrol agent who had beaten him that he could report him. (*See*, Section III.A.) The agent responded that he would not get into trouble, and showed Velásquez his name plate, certain that he would not be punished for his actions. Indeed, it appears that he never was disciplined.
- Evidence shows that Border Patrol Agent Mario Bellamy battered Margarita Rodríguez, (*See*, Section III.A.), a middle-aged woman holding her two-year-old son in front of an apartment complex full of witnesses in broad daylight, apparently secure that he would never be disciplined.
- Convicted rapist Luis Santiago Esteves apparently recognized that the lack of functional disciplinary mechanisms in the Border Patrol would allow him to prey freely on his victims. He told one of his alleged victims in a telephone conversation, taped by police, "In the desert, you do what you please."¹³⁸

¹³⁶ McDonnell and Rotella, "When Agents Cross Over."

¹³⁷ Paul Salopek, "La Migra: The Border Patrol's Wall of Silence," *The Texas Observer*, March 12, 1993.

¹³⁸ McDonnell and Rotella, "When Agents Cross Over the Borderline," *Los Angeles Times*, April 22, 1993.

D. Problems with the Customs Services' Complaint Procedures

The complaint and review procedures for the Customs Service differ from those used by the INS. Customs Service complaints are submitted, by the public or by Customs Service personnel, to the Office of Internal Affairs within Customs. As explained above, the allegations of abuse against INS employees are submitted to the OIG at the Department of Justice. However, the OIG at the Department of Treasury does not receive or investigate civil rights complaints against Customs agents. Further, because the Customs Service is not part of the Department of Justice, allegations of criminal civil rights violations are reviewed on an ordinary, rather than an expedited, basis by the Civil Rights Division at the Department of Justice.

Americas Watch has monitored the Customs Service complaint and review procedures for only a limited time. Nonetheless, we have serious concerns about the mechanisms currently in place to receive allegations of abuse.

In many regards, the complaint procedures for the Customs Service suffers from the same weaknesses that plague the INS. For example, the Customs Service, like the INS, fails to make complaint forms available to the public in a consistent fashion. Additionally, Customs agents, like their INS counterparts, often dissuade complainants from lodging allegations of abuse and, on occasion, have filed counter-charges against victims to deter them from filing complaints against agents.

1. Complaints form

Customs Service officials have informed Americas Watch that a standardized complaint form is made available to prospective complainants. However, the form is designed for the receipt of a wide range of complaints involving problems such as theft and property confiscations. More problematic than the design of the form, though, is the fact that Customs personnel fail to provide information or to furnish the form to complainants consistently.

Leo Wilde, an El Paso resident who alleges that he was beaten by a Customs Service agent (see below) testified in court that he spoke with eight different people at the Customs Service before his complaint was accepted. When he tried to present a complaint that he had already written, a Customs Service agent made him re-write it in front of him.

2. Agents dissuade victims from filing complaints

It is disturbing to note that in each case of alleged Customs abuse documented in this report in which the victim sought to complain, agents failed to respond appropriately. In one recent case documented above, Francisco Jayme attempted to report abusive treatment by agents after he was subjected to a humiliating strip search at the Customs office at a border crossing at El Paso in January 1993. (*See*, Section III.C.). After he was released from custody, he returned to the Customs station and spoke with a supervisor who explained that the shift had just changed and that he could not accept a complaint. According to Jayme, the supervisor told Jayme to go to a Customs office in El Paso without providing a phone number, the exact street address or the name of a person to contact. A few days later, Jayme returned to the station to complain. This time the supervisor on duty spent about 15 minutes trying to dissuade Jayme from lodging a complaint.

3. Counter-charges

Customs Service agents also resort to filing intimidating criminal misdemeanor or felony charges against victims of abuse to dissuade them from pursuing complaints. In a recent, well-publicized case, El Paso resident Leo Wilde was charged with assault after he was allegedly beaten severely by a Customs agent at the Paso del Norte Bridge checkpoint in El Paso in December 1991. Wilde was acquitted of all charges on August 28, 1992.

V. RECOMMENDATIONS

It is disappointing to note that virtually all of the recommendations made by Americas Watch in its May 1992 report must be repeated now—nearly a full year after they were first written—because there has been no discernible change in INS policy. As we noted last year, many of the problems documented by Americas Watch can be remedied by policy and attitudinal changes on the part of the INS and Customs Service and their agents.¹³⁹ Others require regulatory and statutory changes. In particular, the reform of disciplinary review mechanisms for allegations of human rights violations committed by both services requires federal statutory change, if those mechanisms are to be fully effective.

Americas Watch calls upon the Clinton administration to apply international human rights standards here in the United States by appointing an INS Commissioner who is committed to curtailing abuses and demanding accountability for culpable agents. Similarly, the Customs Commissioner should take steps to guarantee that the basic human rights of those with whom Customs agents come into contact are respected and that abusive agents are disciplined appropriately.

The changes suggested below are imperative if the rights of undocumented immigrants, and those of documented residents and U.S. citizens, are to be respected in the border region. In particular, Americas Watch calls upon the INS, the Customs Service and the U.S. government to implement immediately the following recommendations:

I. All individuals within the United States, regardless of their immigration status, are entitled to respect for their basic human rights. The INS needs to redirect its mission to emphasize the promotion and protection of human rights in the fulfillment of its responsibility to enforce U.S. immigration laws. Similarly, the Customs Service must respect the human rights of those with whom it interacts. Both Services must make clear to their personnel that failure to respect the legally protected human rights of any person will be punished.

II. INS and Customs agents should, as far as possible, apply non-violent means before resorting to the use of force or firearms. Whenever the lawful use of force or firearms is unavoidable, INS and Customs agents should:

- A. Employ force only as necessary to attain a legitimate objective and only in proportion to the importance of that objective.
- B. Minimize damage and injury, and respect and preserve human life.
- C. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.

¹³⁹ The report which we issued last year only considered abuses and recommendations for change by the INS. This report also considers recommended changes which should be adopted by the Customs Service.

D. Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

III. Firearms should be reserved only for the protection of agents or third persons from imminent threat of death.

A. Agents should not brandish their firearms in the course of everyday enforcement.

B. Agents should never shoot a fleeing suspect unless absolutely necessary to preserve the lives of others.

C. Agents should never fire warning shots.

D. Weapons inspections should be thorough and consistent so that immigration law enforcement agencies are not dependent solely upon agents' reports regarding firearms incidents.

E. Agents should be strictly prohibited from carrying non-issue weapons when they are on duty. Lax weapons policies hinder weapons testing and encourage unauthorized and abusive firearms use by agents.

IV. Nonlethal devices (i.e., stun guns, gas guns, nonlethal projectiles, and vehicle stopping devices) should be used in preference to firearms and other lethal weapons.

V. All equipment carried by INS and Customs agents should be used only for its intended purposes (e.g. flashlights and hand held radios should not be used as weapons).

VI. When injury or death is caused by the use of force or firearms, INS and Customs agents should report the incident immediately to their superiors.

VII. INS and Customs agents should never use force, threats of force, or arbitrary detention as forms of extrajudicial punishment.

VIII. A fully empowered and independent Review Board, outside the INS and Customs Service should be created to investigate all complaints of abuse directed at INS and Customs agents.

A. Review Board staff should be experienced in investigating abuses by law enforcement personnel. INS and Customs agents should not be immediately eligible for employment with the Review Board.

B. All shootings and instances of serious abuse should be reported immediately to the Review Board. The failure to report an incident to the Review Board should be a sanctionable offense.

C. The Review Board should develop a system whereby the records of agents who have been the subject of repeated complaints are reviewed by the appropriate authorities.

D. The Review Board should make public the names of all agents alleged to have been involved in cases of serious abuse, unless there is specific evidence that doing so would jeopardize the safety of the agents involved or hinder the investigation. If these special circumstances are temporary, the names should be released when the circumstances no longer exist.

E. Agents involved in shootings or other incidents that result in death or serious injury should be assigned to restrictive duty or suspended until the circumstances are clarified and the Review Board completes its investigation; no agent involved in such an incident should be reinstated without first receiving stress counseling.

F. All cases in which the Review Board finds that an agent committed an offense which is prosecutable should be turned over to the relevant authorities for prosecution. Such referral,

however, should not serve as an excuse for inaction by the Review Board. Neither should the decision by a prosecutorial agency not to prosecute a case be treated by the Review Board as an exoneration of the agent or agents involved.

G. All cases in which the Review Board finds that an agent violated INS or Customs regulations should be forwarded to appropriate supervisory personnel with a recommendation for sanctions. Review Board recommendations should be implemented by supervisory personnel; where these personnel refuse to implement a Review Board recommendation, they should be required to justify promptly and in writing their reasons for failing to do so.

IX. Procedures should be established to enable undocumented immigrants to file complaints against INS and Customs agents without fear of reprisal.

A. The public should be effectively informed of its right to file complaints against INS and Customs abuse. All INS and Customs personnel should be fully familiar with the complaint process. Easy-to-understand complaint forms should be supplied and an explanation of the complaint procedures, in the languages of the immigrant community, should be displayed prominently in all INS and Customs offices. A 24-hour, toll free phone number, staffed by persons who speak the languages of the immigrant community, should be established for the purpose of receiving complaints against agents of the INS and the Customs Service.

B. All persons who file complaints should be informed when their complaints are received, given periodic status reports, and provided access to an appeal process.

C. The appeal process should be public and transparent, except in unusual cases in which specific evidence is presented as to why the Review Board should do otherwise.

D. Under no circumstances should reprisals be taken against undocumented immigrants who file complaints, nor against agents of the INS and Customs Service who denounce violations to the Review Board; cases in which reprisals are alleged should be referred to the Review Board and treated like other complaints of abuse.

E. No information obtained regarding the immigration status of witnesses to alleged violations committed by INS and Customs agents which is obtained in connection with investigations into such abuses, should be used against such witnesses in immigration proceedings.

X. All INS and Customs agents who regularly come into contact with the public should be in uniform and clearly identifiable by name. All INS and Customs vehicles should bear large, fluorescent, reflective two or three-digit identification numbers.

XI. The INS and Customs services should eliminate all strip and body cavity searches unless there is probable cause to suspect that a person possesses contraband. Strip and body cavity searches should never be used to intimidate, harass, or humiliate the person being searched. Whenever possible, searches should be conducted by third parties, rather than the arresting agent.

XII. All INS and Customs agents should be required to undergo human rights training to increase their understanding of the basic rights of the individuals with whom they are in contact daily.

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